

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Crl.MC.No. 6288 of 2015 ()

**CP 91/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT, SASTHAMCOTTA
CRIME NO. 49/2009 OF SASTHAMCOTTAH EXCISE RANGE OFFICE, KOLLAM**

PETITIONER/ACCUSED :

**ANIL KUMAR, AGED 47 YEARS, S/O. RAGHAVAN ACHARI,
ANANDU BHAVAN, KARINTHOTTUVA MURI, SATHAMCOTTA VILLAGE,
KUNNATHOOR VILLAGE, KOLLAM DISTRICT.**

**BY ADVS.SRI.K.SIJU
SMT.S.SEETHA**

RESPONDENT/STATE :

**STATE OF KERALA, THROUGH THE EXCISE INSPECTOR,
SASTHAMCOTTA EXCISE RANGE, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

K.RAMAKRISHNAN, J.

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Crl. M.C.No.6288 OF 2015

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Dated this the 23rd day of September, 2015

ORDER

This is an application filed by the accused in CP No. 91/2013 on the file of the Judicial First Class Magistrate Court Sasthamcotta to issue direction to the Magistrate to consider and dispose of the bail application under Section 482 of the Code of Criminal Procedure (herein after referred to as the Code).

2. It is alleged in the petition that the petitioner was arrayed as an accused in CR No.49/2001 of Sasthamcotta Excise Range alleging offences punishable under Section 55 (i) of the Abkari Act. After investigation, final report was filed which is pending as CP No.91/2013 on the file of the Judicial First Class Magistrate Court Sasthamcotta. During crime stage, he was released on bail. He did not get any summons in the committal proceedings. It is understood that non-bailable warrant has been issued against him. He is prepared to surrender, but apprehends that if he

surrenders he will be remanded to custody without considering his bail application. So the petitioner has no other remedy except to approach this court seeking the following relief:

“To consider and dispose the bail application of the petitioner on the day of his surrender itself in C.P.91/2013 in the light of the principles laid down in Sukumari v State of Keraa 2001 (1) KLT 22 and t direct the court below to recall the warrante issued against the petitioner”.

3. Considering the nature of relief claimed by the petitioner, this court feel that the petition can be disposed of at the admission stage after hearing the counsel for the petitioner and learned Public Prosecutor Smt. Hyma representing the respondent. The counsel for the petitioner submitted that his only apprehension is that if he surrenders, he will be remanded to custody and his bail application will not be considered. The application was opposed by the learned Public Prosecutor.

4. Even as per the allegations in the petition it is seen that he did not appear when final report was filed in CR No.49/2009 of Sasthamcotta Excise Range which is

pending as CP.No.91/2013 before the Judicial First Class Magistrate Court, Sasthamcotta and non-bailable warrant is pending against him. The counsel for the petitioner submitted that since he did not receive summons in the case, he was not aware of that proceedings, but that is a matter to be considered by that court. The apprehension of the petitioner that if he surrenders, his bail application will not be considered and he will be remanded to custody is without any basis, as this court has in several cases of this nature expressly observed that there is a duty cast on the Presiding Officer of the criminal court to consider and dispose of the bail application if any filed by the accused on their surrender as far as possible on the date of filing itself. In view of such direction already given, there is no necessity to issue any direction as claimed in the petition. However considering the apprehension raised by the counsel for the petitioner, this court feels that the petition can be disposed of as follows:-

If the petitioner surrenders before the Judicial First Class Magistrate's Court, Sasthamcotta in CP No.91/2013

(C.R. No.49/2009 of Sasthamcotta Excise Range) pending before that court and moves for recalling the warrant and release him on bail, then the learned Magistrate is directed to consider and dispose of the bail application on the date of filing itself as far as possible after hearing the Assistant Public Prosecutor of that court in accordance with law.

With the above directions and observations this petition is disposed of.

Sd/–
K.RAMAKRISHNAN, JUDGE

SKV