

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

Cr1.MC.No. 6320 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN SC 1142/2014 of
PRINCIPAL ASSISTANT SESSIONS COURT, KOLLAM IN
CRIME NO. 154/2009 OF CHATHANNOOR POLICE STATION, KOLLAM.

PETITIONER(S)/2ND ACCUSED :

RATHEESH @ KUTTAN, AGED 35 YEARS,
S/O. BRAHMADAS, SREEKRISHNAVILASOM HOUSE,
PULIYANADUCHERIYIL, CHIRAKKARA VILLAGE.

BY ADV. SRI.V.ANIL (K/1480/98)

RESPONDENT(S) :

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM-682 031.
(CRIME NO.154 OF 2009 OF CHATHANNOOR POLICE STATION
KOLLAM DISTRICT).

BY PUBLIC PROSECUTOR SMT. SAREENA

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

SS

K. RAMAKRISHNAN, J.

Crl. M.C.No.6320 of 2015

Dated this the 23rd day of September, 2015

ORDER

This criminal miscellaneous case is filed by the 2nd accused in S.C.No.1142/2014 on the file of the Principal Assistant Sessions Court, Kollam, to issue direction to the Assistant Sessions Judge to consider and dispose of the bail application on the date of filing itself under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner was arrayed as second accused in Crime No.154/2009 of Chathannoor police station alleging offences under Section 143, 147, 148, 149, 452, 427, 324 and 308 of the Indian Penal Code and Section 27 of the Arms Act. After investigation, final report was filed before the Magistrate court and thereafter it was committed to the Sessions Court where it was taken on file as S.C.No.1142/2014 and it was made over to Principal Assistant Sessions Court, Kollam, for

disposal. Since he did not appear, non-bailable warrant is issued against him. Though he is prepared to surrender, he apprehends that his bail application will not be considered and he will be remanded to custody. So the petitioner has no other remedy, except to approach this court seeking the following relief:

“This Hon'ble Court may be pleased to direct the Principal Assistant Sessions Court, Kollam to recall the Non Bailable Warrant in S.C.No.1142/2014 issued against the petitioner and to enlarge the petitioner on bail on the date of petitioner's surrender itself considering his bail application on merit, in the interest of justice”.

3. Considering the nature of relief claimed, this court felt that the petition can be disposed of at the admission stage itself after hearing the counsel for the petitioner and learned Public Prosecutor Smt.S.Hyma appearing for the respondent. The counsel for the petitioner submitted that, his apprehension is that he will be remanded to custody if he surrenders without considering his bail application and unless a direction is given from this court, court below will not consider his bail application.

4. The application was opposed by the learned Public Prosecutor.

5. It is an admitted fact that the petitioner is the 2nd accused in Crime No.154/2009 of Chathannoor police station, which is now pending as S.C.No.1142/2014 before the Principal Assistant Sessions Court, Kollam. Since he did not appear, non-bailable warrant is issued against him. His apprehension is that, if he surrenders and moves for bail, he will be remanded to custody without considering his bail application. His apprehension appears to be without any basis, as this court has observed in several cases of this nature that the presiding officers of the criminal courts are duty bound to consider and dispose of the bail application on the date of filing of the application itself as far as possible. Further this court cannot direct the court below to grant bail after recalling the warrant as claimed in their petition. It is for that court to consider the circumstances and pass appropriate orders in that application. Though there is no necessity to issue any direction as claimed,

considering the apprehension raised by the petitioner, this court feels that the petition can be disposed of as follows:

If the petitioner surrenders before the Principal Assistant Sessions Court, Kollam, and moves for recalling the warrant and release him on bail in S.C.No.1142/2014 pending before that court, then the learned Principal Assistant Sessions Judge is directed to consider and dispose of the bail application as far as possible on the date of filing of the application itself after hearing the Additional Public Prosecutor of that court in accordance with law.

With the above direction and observation the petition is disposed of.

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge