

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.MC.No. 6960 of 2015 ()

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CC 169/2013 of CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM
CP 9/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM
CRIME NO. 2926/2012 OF ERNAKULAM CENTRAL POLICE STATION, ERNAKULAM
=====**

PETITIONER/ACCUSED:

**C.H.ABDULLA KUNHI, AGED 33 YEARS
S/O. C.H.MOIDU HAJI, C.H.MAHAL
KALANAD P.O., KALANAD VILLAGE
HOSDURG TALUK, KASARAGOD DISTRICT**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.PRATHAP PILLAI
SRI.SEBIN THOMAS
SRI.VISHNU BHUVANENDRAN**

RESPONDENT/STATE:

**STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM**

BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29-10-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

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| ANNEXURE A1 | COPY OF THE COMPLAINT FILED BY THE DEFACTO COMPLAINANT DATED 29.10.2012 BEFORE THE LEARNED CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM |
| ANNEXURE A2 | COPY OF THE FIR DATED 12.11.2012 IN CIRME NO.2926/2012 OF ERNAKULAM CENTRAL POLICE STATION |
| ANNEXURE A3 | COPY OF the ORDER DATED 18.05.2013 IN CRL.M.C.NO.904/2013 PASSED BY THE LEARNED SESSIONS JUDGE, ERNAKULAM GRANTING ANTICIPATORY BAIL TO THE PETITIONER |
| ANNEXURE A4 | COPY OF THE CHARGE SHEET DATED 29.06.2013 FILED IN CRIME NO.2926 NUMBERED AS C.C.NO.169/2013 BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM |
| ANNEXURE A5 | COPY OF THE CHARGE SHEET DATED 20.06.2014 FILED IN CRIME NO..2926 NUMBERED AS C.C.169/2013 NUMBERED AS C.P.9/2015 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE-II, ERNAKULAM |
| ANNEXURE A6 | COPY OF THE NOTICE OF PROCLAMATION ISSUED UNDER SECTION 82, CR.P.C. AGAINST THE PETITIONER |

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.6960 of 2015

Dated this the 29th day of October, 2015

O R D E R

The petitioner herein is the sole accused in C.P.No.9/2015 of the Judicial First Class Magistrate Court-II, Ernakulam. The crime in this case was originally registered mainly under Section 498-A IPC, and final report was also accordingly submitted in court by the police. Later, further investigation was ordered by the court, and accordingly, the police conducted further investigation, and submitted a supplemental final report under Section 376 IPC. Section 498-A alleged in the original final report was deleted. Now, it is a case of rape, on the allegation that under a false promise of marriage, the victim was subjected to sexual intercourse by the petitioner. Thus, now the main allegation is one of vitiated consent for sexual intercourse. It is not known what allegation is true; whether the petitioner and the complainant had lived as man and wife for some time, or whether it is really a case of rape. This is a matter to be decided on trial. The petitioner's grievance is that the court below has issued a warrant of arrest against him, and has even initiated proceedings

under Sections 82 and 83 Cr.P.C. He now wants to surrender before the learned Magistrate, but he apprehends that he would be remanded to judicial custody. He, in such a situation, seeks a direction to the learned Magistrate to consider and dispose of his application for bail, on the date of surrender itself. He also seeks an order quashing the non-bailable warrant issued from the court below. As regards the first prayer to quash the warrant, I find that appropriate decision will have to be taken by the learned Magistrate, who has issued warrant of arrest for proper reasons. I do not think that the learned Magistrate will mechanically remand him to judicial custody, without perusing the entire case records. The petitioner will have to make application for regular bail on surrender. Let appropriate decision regarding bail be taken by the learned Magistrate. The petitioner will have to explain his failure to appear in the court promptly. As regards the proceedings initiated under Sections 82 and 83 Cr.P.C. also, let appropriate decision be taken by the learned Magistrate, proceed or not to proceed.

In the result, this Crl.M.C. is disposed of, with a direction to the court below that in case application for bail is filed by the petitioner herein on surrender in C.P. No.9/2015, the same shall

be judiciously considered, and appropriate decision shall be taken in the matter of bail on the date of surrender itself, however, with notice to the other side. The petitioner is granted time for seven days to surrender before the learned Magistrate and make application for bail. During this period, enforcement of the warrant of arrest and other coercive steps will stand suspended.

Sd/-
P. UBAID, JUDGE

sd

// True Copy //

P.A. to Judge