

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

CrI.MC.No. 7379 of 2015 ()

**LP NO. 16/2008 IN CC 185/2007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
SULTHANBATHERY
CRIME NO. 61/2005 OF AMBALAVAYAL POLICE STATION, WAYANAD**

PETITIONER/ACCUSED :

**BASHEER MUHAMMED KUTTY
AGED 78 YEARS, S/O. MUHAMMED KUTTY MAKKY
JAMEELA VEEDU, ATTEPO
P.O. TELLICHERRY, KANNUR DISTRICT
KERALA.**

BY ADV. SRI.A.CHANDRA BABU

RESPONDENT/STATE :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
KOCHI – 31.**

BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

...2/-

Crl.MC.No. 7379 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE I : COPY OF THE PASSPORT.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. RAMAKRISHNAN, J.

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Crl.M.C.No.7379 of 2015

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Dated this the 23rd day of November, 2015

O R D E R

This is an application filed by the petitioner who is the accused in L.P.No.16 of 2008 in C.C.No.185 of 2007 on the file of Judicial First Class Magistrate Court-I, Sultan Batheri for issue direction to the Magistrate to consider the bail application on the same day and grant bail to the petitioner in the event of his surrender under Section 482 of Code of Criminal Procedure (hereinafter called 'the Code').

2. It is alleged in the petition the crime was registered on the basis of the statement given by the de facto complainant by Ambalavayal Police as crime no. 61/2005 of Ambalavayal Police Station under Section 420 of Indian Penal Code. After investigation, final report was filed and it was taken file as C.C.No.185 of 2007 on the file of the Judicial First Class Magistrate Court-I, Sultan Batheri. Since the petitioner did not appear, the case has been transferred

to register long pending cases as L.P.16 of 2008 and non bailable warrant issued and that is pending. The petitioner has not received any summons. He was not residing in the address shown in the final report and he was working in Kuwait for more than two decades. Now he is settled in Thalassery. Though he is prepared to surrender, since non bailable warrant is pending, he apprehends that if he surrenders, he will be remanded to custody without considering his bail application. Hence the petition.

3. Heard the learned counsel for the petitioner Sri.Nemom Chandra Babu and Public Prosecutor Smt.Seena Ramakrishnan.

4. The counsel for the petitioner submitted that though he is prepared to surrender, he apprehends that he will be remanded to custody without considering his bail application that prompted into file his petition.

5. The application is opposed by the Public Prosecutor on the ground that he is an absconding accused.

6. It is seen from the allegations in the petition itself that the crime was registered in the year 2005 as crime no.61 of 2005 of Ambalavayal Police Station and after investigation final report was filed before the Judicial First Class Magistrate Court-I, Sultan Batheri, where the case was taken on file as C.C.No.185 of 2007. It is also in a way admitted that since the petitioner did not appear, the case has been now transferred to register long pending cases and pending as L.P.No.16 of 2008 before that court and non bailable warrant is pending against him. The apprehension of the petitioner that if he surrenders and moves for bail, 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 observed that the Presiding Officer of the criminal court are duty bound to

consider and dispose of the bail applications filed by the accused on their surrender as far as possible on the date of filing the application itself. So the apprehension of the petitioner is without any basis. Further this court cannot direct the Magistrate to grant bail in an application under Section 482 of the Code. The reasons stated by the petitioner are genuine or not are matters to be considered by the Magistrate while considering the bail application. However considering the apprehension raised by the petitioner, this feels that the petition can be disposed as follows. If the petitioners surrender before the Judicial First Class Magistrate Court-I, Sultan Batheri, in L.P.No.16 of 2008 in C.C.No.185 of 2007 (Crime No. 61 of 2005 of Ambalavayal Police Station) pending before that court and moves for recalling the warrant and releasing him on bail, the learned Magistrate is directed to consider and dispose of the bail application as far as possible on the date of

filing the application itself after hearing the Assistant Public Prosecutor of that court as well in accordance with law. With above direction and observation, the petition is disposed of. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN
JUDGE