**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE V.G.ARUN**

**WEDNESDAY, THE 02ND DAY OF DECEMBER 2020 / 11TH AGRAHAYANA, 1942**

**Crl.MC.No.5020 OF 2020(F)**

**AGAINST THE ORDER/JUDGMENT IN SC 87/2013 DATED 02-04-2016 OF ADDITIONAL DISTRICT COURT, MANJERI**

**AGAINST THE ORDER/JUDGMENT IN CC 11/2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, PONNANI**

**PETITIONER/S:**

**MUHAMMAD JABIR**
**AGED 32 YEARS**
**PULINKUNNATHEL HOUSE, PIDAVANNOOR P.O., NARANIPPUZHA, NANNAMUKKU, MALAPPURAM DISTRICT.**

**BY ADV. SRI.V.K.SUNIL**

**RESPONDENT/S:**

1. **UNION OF INDIA**
   **REPRESENTED BY ITS SECRETARY, MINISTRY OF EXTERNAL AFFAIRS, SOUTH BLOCK, NEW DELHI-110 011.**

2. **STATE OF KERALA**
   **REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.**

3. **THE CHIEF PASSPORT OFFICER**
   **CPV DIVISION, MINISTRY OF EXTERNAL AFFAIRS, ROOM NO.8, PATIALA HOUSE, TILAKMARG, NEW DELHI-110 011.**

4. **THE REGIONAL PASSPORT OFFICER**
   **INTERCITY ARCADE, DOWN HILL POST, MALAPPURAM-676 519.**

**R1, R3-4 BY ADV. SRI.P.VIJAYAKUMAR**

**OTHER PRESENT:**

**SR.PP.AMJAD ALI**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**V.G.ARUN, J.**

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**CRL.M.C.No. 5020 of 2020**

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**Dated this the 2nd day of December, 2020**

**O R D E R**

Petitioner is the 1st accused in C.C.No.11 of 2018 on the files of the Judicial First Class Magistrate Court, Ponnani. The case originated from Crime No.434 of 2007, registered at the Changaramkulam Police Station for offences punishable under Sections 143, 147, 148, 341, 323, 324, 308 and 354 read with 149 of IPC. The case was originally committed for trial to the Sessions Court, Manjeri, but on finding that the offence under Section 308 IPC is not made out, the case was sent back to the Magistrate Court for trial.

2. The petitioner is the holder of an Indian passport, which was impounded while he was working abroad, on noticing that the pendency of the criminal case was not mentioned when the petitioner applied for renewal of his passport. Petitioner challenged the impounding in W.P(C).No.4947 of 2016. By Annexure A1 judgment, the writ petition was disposed of without interfering with the order of impounding, but granting liberty to the petitioner to approach the jurisdictional court for permission to stay abroad for two years and directing the Consulate in Dubai, to consider petitioner's passport in accordance with law. In terms of the directions, the Sessions Court,

Manjeri issued Annexure A2 order, allowing the petitioner to stay abroad for two years commencing from 2.4.2016. On the strength of Annexure A2, the petitioner was issued passport with validity period of two years. Again the petitioner submitted an application before the Magistrate Court, Ponnani, to which the case had been sent back, seeking extension of the period of his stay at Dubai and the period was extended by another two years as per Annexure A3. Correspondingly, the validity period of the passport was extended by two years as per Annexure A4. The extended period is due to expire on 20.12.2020 and hence the petitioner filed Annexure A5 seeking further extension of his period of stay abroad by two years. As Annexure A6 order, extension has been granted for one year from 19.8.2020. Aggrieved, the Crl.M.C is filed.

3. Learned counsel for the petitioner submitted that trial of the case is at a stand still, since the prosecution has not been able to secure the presence of the alleged victims, who are nomadic ladies hailing from Tamil Nadu. It is contended that the delay in disposal of the case not being for reasons attributable to the accused, refusal to permit the petitioner to continue his employment abroad for two years, amounts to negation of his fundamental rights under Articles 14, 19(1)(g) and 21 of the Constitution of India.

4. Heard the learned Public Prosecutor also.

5. I find substantial force in the contentions urged by the learned

counsel for the petitioner. As rightly pointed out, the case against the petitioner has been languishing in court without attaining finality for more than 13 years. The delay is due to the prosecution's inability to require the presence of the victims/witnesses. Possibility of the case being listed for trial being remote, the prayer for granting permission to stay abroad for another two years ought to have been allowed. No reason is stated in Annexure A6, for limiting the period to one year.

In the result, the Crl.M.C is allowed. The petitioner is permitted to stay abroad for two years from 1.1.2021, subject to the condition of the petitioner executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties for the like amount before the trial court, undertaking to report before the trial court before the expiry of the two year period and to engage a counsel to appear on his behalf during his absence.

Sd/-
**V.G.ARUN, JUDGE**

*vgs*

# APPENDIX

**PETITIONER'S/S EXHIBITS:**

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| **ANNEXURE A1** | **TRUE COPY OF THE PASSPORT OF THE PETITIONER.** |
| **ANNEXURE A2** | **TRUE COPY OF THE OLD PASSPORT (NO.G1634669) OF THE PETITIONER.** |
| **ANNEXURE A3** | **TRUE COPY OF THE RESIDENT PERMIT STAMPED ON THE PASSPORT OF THE PETITIONER.** |
| **ANNEXURE A4** | **TRUE COPY OF THE LETTER DATED 4.6.2015 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT.** |
| **ANNEXURE A5** | **TRUE COPY OF THE LETTER DATED 17.9.2015 SENT BY THE PETITIOENR TO THE 3RD RESPONDENT.** |
| **ANNEXURE A6** | **TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 29.11.2015.** |
| **ANNEXURE A7** | **TRUE COPY OF THE POSTAL RECEIPT OF ANNEXURE A6.** |