IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 29TH DAY OF JULY 2024 / 7TH SRAVANA, 1946

WP(CRL.) NO. 827 OF 2024

PETITIONER:

NAJEEB FAZZILUDEEN,
AGED 43 YEARS
S/O FAZZILUDEEN,
KARIM BUNGALOW,
KANIYAPURAM.P.O,
THIRUVANANTHAPURAM,
PIN - 695301

BY ADVS.
C.S.MANILAL
S.NIDHEESH

RESPONDENTS:

1 **STATE OF KERALA,**
REP. BY THE SECRETARY TO GOVT.,
HOME DEPARTMENT,
SECRETARIAT, TRIVANDRUM.,
PIN - 695001

2 **THE DISTRICT POLICE CHIEF,**
THIRUVANANTHAPURAM(RURAL),
RURAL DISTRICT OFFICE,
THIRUVANANTHAPURAM.,
PIN - 695001

3 **THE DEPUTY SUPERINTENDENT OF POLICE,**
SPECIAL BRANCH,
THIRUVANANTHAPURAM,
RURAL SPECIAL BRANCH OFFICE,
THIRUVANANTHAPURAM.,
PIN - 695001

4 **THE STATION HOUSE OFFICER,**
MANGALAPURAM POLICE STATION,
MANGALAPURAM,
THIRUVANANTHAPURAM.,
PIN - 695302

5 **SUMIN LATHEEF,**
D/O LATHEEF,
THOPPIL VEEDU,
KANIYAPURAM,
PALLIPPURAM,
THIRUVANANTHAPURAM., PIN - 695301

OTHER PRESENT:

SRI. NOUSHAD K. A. (PP)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 29.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(Crl) No. 827 of 2024

Dated this the 29th day of July, 2024

JUDGMENT

Petitioner is the accused in Crime No. 369/2024 of Mangalaupram Police Station. The offences alleged in the said crime are under Section 323, 498-A 506 r/w Section 34 of the Indian Penal Code, 1860.

2. Petitioner is a pilot with Air India Express. For the purpose of his employment, he sought the grant of a certificate of Non Involvement of Offence Certificate (NIOC). However, by Ext.P18, the said request was rejected in view of the pending investigation into Crime No. 369 of 2022. Petitioner challenges the said rejection notice produced as Ext.P1, apart from challenging the FIR registered in the above crime.

3. I have heard Sri.C.S.Manilal, the learned counsel for the petitioner as well as Sri.Noushad K.A., the learned Public Prosecutor. Considering the nature of relief that I propose to issue, notice to respondent No.5 is dispensed with.

4. Since the investigation into Crime No.369/2022 had only commenced, I am of the view that it is too premature a stage to consider the contentions raised by the petitioner regarding the falsity of the allegations. Those are matters which will have to be considered by the Investigating officer during the course of the investigation or thereafter by an appropriate court. Therefore, this Court is not entering into the question regarding the legality or otherwise of the FIR registered against the petitioner.

5. Pursuant to the petitioner's application, the NIOC applied for was rejected on the basis of the pending crime. This Court has time and again observed that the pendency of a criminal investigation cannot be regarded as a pending criminal proceedings. The registration of FIR only triggers an investigation, and the salutary principle of presumption of innocence also stand in favour of an accused. Moreover, before a final report is filed, it cannot even be stated that a criminal proceeding is pending against the accused.

6. Therefore, I am of the view that rejection of NIOC is not legally proper, though there are statutory provisions under the Kerala Police Act, 2011 which indicate that if a crime is pending, the request for such a certificate should be

rejected. This Court has observed in earlier cases that when an application for non involvement in an offence is sought for, the purpose behind such an application is to indicate to the employer or other entity whether the applicant is involved in a crime or not. Therefore, the proper course would be to issue a certificate indicating the existence or otherwise of criminal proceedings against the applicant.

7. Viewed in the above perspective, instead of rejecting the application of the petitioner, the 2nd respondent ought to have issued a certificate, avoiding the term 'Rejection Notice' but referring to the crime if any pending against the applicant, and also specifying the stage of the proceeding, ie., whether it is under investigation or whether a final report has been filed or whether he has been convicted or not. Such a course of action would render justice and provide relief to the applicant and serve the purpose for issuing such a certificate. The term 'Rejection Notice' in the certificate conveys a meaning which will be misunderstood and create confusion.

8. In such a view of the matter, I am of the opinion that Ext.P18 order rejecting the petitioner's application is not

legally proper. Hence, I set aside Ext.P18 and direct the competent amongst respondents 1 to 4 to issue a certificate of NIOC referring to the details of the crime pending against the petitioner by avoiding the term “rejection notice." The liberty of the petitioner to initiate proceedings after completion of the investigation in Crime No. 369/2024 shall stand reserved.

9. Before parting with the case, it is appropriate to observe that the 1st respondent ought to initiate appropriate steps to rename the certificate as “involvement or Non involvement in crime certificate”. Such a step will enure to the benefit of many.

This writ petition is disposed of as above.

Sd/-

BECHU KURIAN THOMAS
JUDGE

AJM

APPENDIX OF WP(CRL.) 827/2024

PETITIONER EXHIBITS

Exhibit P1	A COPY OF THE RECEIPT OF THE COMPLAINT OP.NO 217/24 DATED 4.9.2011
Exhibit P2	A COPY OF THE PETITION IN O.P 1769/2019 BEFORE THE FAMILY COURT ATTINGAL DATED 23.11.2019
Exhibit P3	A COPY OF THE LAWYER NOTICE DATED 24.3.2023
Exhibit P4	A COPY OF THE REPLY NOTICE TO THE EXBT P3 DATED 5.4.2023
Exhibit P5	A COPY OF THE TALAQ NOTICE DATED 31.7.2023
Exhibit P6	A COPY OF THE TALAQ NOTICE DATED 7.9.2023
Exhibit P7	A COPY OF THE TALAQ NOTICE DATED 7.10.2023
Exhibit P8	A COPY OF THE REPLY TO TALAQ DATED 16.8.2023
Exhibit P9	A COPY OF THE O.P 1246/2023 FILED BEFORE THE FAMILY COURT ATTINGAL DATED 17.8.2023
Exhibit P10	A COPY OF THE JUDGMENT IN O.P 1246/23 OF THE FAMILY COURT ATTINGAL DATED 31.10.2023
Exhibit P11	A COPY OF THE O.P(G.W) 1925/23 BEFORE THE FAMILY COURT ATTINGAL DATED 20.12.2023
Exhibit P12	A COPY OF THE BANK STATEMENT FROM 3.4.2023 TO 1.1.2024
Exhibit P13	A COPY OF THE P.P.F ACCOUNT STATEMENT FROM 19.8.2020 TO 3.2.2024
Exhibit P14	A COPY OF THE ACCOUNT STATEMENT FROM 1.4.2021 TO 31.3.2022
Exhibit P15	A COPY OF THE ACCOUNT STATEMENT FROM 1.4.2022 TO 31.3.2023
Exhibit P16	A COPY OF THE ACCOUNT STATEMENT FROM 1.4.2023 TO 31.3.2024
Exhibit P17	A COPY OF THE F.I.R IN CRIME 369/24 OF THE MANGALAPURAM POLICE STATION TRIVANDRUM
Exhibit P18	A COPY OF THE REJECTION NOTICE DATED

19.5.2024

Exhibit P19	A COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 22.5.2024 ALONG WITH RECEIPT DATED 24.5.2024
Exhibit P20	A COPY OF THE COMPLAINT OF THE MOTHER OF THE PETITIONER DATED 3.5.2023 BEFORE THE 4TH RESPONDENT