

K. Madhu Vs. State of Kerala Represented by the Public Prosecutor

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Court : Kerala

Decided On : Jan-31-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : K. Madhu

Respondent : State of Kerala Represented by the Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 31ST DAY OF JANUARY 2014 11TH MAGHA, 1935 CrI.MC.No. 508 of 2014 ----- CMP67992013 OF CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD, DATED 27-09-2013. ----- CRIME NO. 1189/2012 OF KASARAGOD POLICE STATION, KASARGOD. ----- PETITIONER/ACCUSED NO.5: ----- K. MADHU, AGED 47 YEARS, S/O.DAMODARAN, KAVINTARIKATH HOUSE, 296/4, KANNAPURAM GRAMA PANCHAYATH, MOTTAMMAL.P.O., KANNUR DISTRICT. PIN-670 031. BY ADVS.SRI.M.T.BALAN SRI.B.JAYABAL RESPONDENTS: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.S.HYMA. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31-01-2014, ALONG WITH CRL MC NO:503/2014 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Msd. CrI.MC.No. 508 of 2014 ----- APPENDIX ----- PETITIONER(S)'

ANNEXURES: ----- ANNEXURE A1: THE TRUE COPY OF CMP NO.6799/13 IN CRIME NO.1189/2012 DATED 27.09.13 OF THE HONOURABLE CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD DISTRICT. ANNEXURE A2: THE TRUE COPY OF THE SALARY CERTIFICATE DATED 06.03.2013 ISSUED BY THE COMPANY. RESPONDENT(S)' ANNEXURES: ----- NIL //TRUE COPY// P.A. TO JUDGE. Msd. K. Ramakrishnan, J.

===== CrI.M.C.No.508 of 2014
===== Dated this, the 31st day of January, 2014.

ORDER

This is an application filed by the accused No.5 in Crime No.1189/12 of Kasargod Police Station for modifying the conditions Nos.4 and 5 and also modifying the condition to produce two relative sureties imposed as per Annexure-A1 order under Section 482 of Code of Criminal Procedure.

2. The case of the petitioner was that he is the 5th accused in Crime No.1189/12 of Kasargod police station and the investigation of the case is not completed. The learned Chief Judicial Magistrate, Kasargod has granted statutory bail to the petitioner under Section 167(2) of Code of Criminal Procedure as per Annexure-A1 order. There, the magistrate imposed conditions that he will have to produce two relative sureties, both the sureties have to produce the original title deed and that has to be kept in court till 31.3 examination of the accused and the sureties also produce solvency certificate equivalent to 1% of the amount involved in the case. The conditions are harsh and very difficult to comply with and that will amount to denial of bail. So, he has no other option but to file an CrI.M.C.No.508 of 2014 :

2. : application before this court to quash those conditions under Section 482 of Code of Criminal Procedure.

3. Heard the Counsel for the petitioner and learned Public Prosecutor.

4. It is an admitted fact that the present petitioner was accused in several cases and this is one of such cases registered against him. It is also an admitted fact that he is in jail for long time in connection with all these cases and the Chief Judicial Magistrate has granted statutory bail to him under Section 167(2) of Code of Criminal Procedure evidenced by Annexure-A1 order. It is true that while granting bail to accused in such cases court is entitled to impose conditions. But, that condition should not be of such a nature that could not be complied with. If such conditions imposed of nature of non-compliance then that will amount to denial of bail itself. Further, there is no necessity for the retention of title deeds of the properties of the sureties. This has been considered by this court in the decision reported in Asokan V. C.I of Police, Kadakkal Police Station 2010 (1) KHC1 In that decision this court has held that direction of the magistrate to produce original title deeds of the sureties itself is unwarranted in law. CrI.M.C.No.508 of 2014 :

3. : In the same decision, it has been held that it is mandatory that one of the sureties is a close relative of the accused. So, condition No.4 imposed by the learned magistrate to produce the title deeds of the sureties and retain them in court till the examination of the accused under Section 313 of Code of Criminal Procedure is over is unsustainable in law in view of the dictum mentioned above and the same has to be set aside.

5. Further, in the decision reported in Syamkumar V. State of Kerala and Another 2010 KHC6262 this court has held that production of solvency certificate may not be insisted in cases where the presence of the accused can be assured through other means. An accused who cannot get sureties with solvency certificate shall not be denied bail on that ground. So, the condition imposed by the court below as condition No.5 that the sureties have to produce solvency certificate for an amount equivalent to 1% of the amount involved in the crime is also unsustainable in law. They only undertake the produce of the accused in court when his presence is required and nothing more. So, under the circumstances, conditions Nos.4 & 5 is unsustainable and the same is liable to be set aside. CrI.M.C.No.508 of 2014 :

4. :

6. As regards the sureties are concerned, the learned magistrate has directed to produce two sureties who are relatives of the accused. I feel that instead of two relatives insisting one of the sureties be a close relative of the accused will be sufficient and that will meet the purpose. So, condition Nos.4 & 5 imposed by the court below are set aside and condition No.2 is modified restricting the relative surety to 1 instead of 2 directed by the court below. It is made clear that if the magistrate wants to ascertain the genuineness of the right of the surety in the property, he can verify the title deed and return the same to the surety immediately and he can also insist for the proof of identity of the surety also. With the above modifications, the petition is disposed of. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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