

Harshakumar Vs. the State of Kerala

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Court : Kerala

Decided On : Apr-01-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Harshakumar

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 11TH DAY OF APRIL 2014 11TH CHAITHRA, 1936 CrI.MC.No. 1953 of 2014 () ----- L.P.NO.4/2008 IN CC.NO.975/2005 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I, KOTTARAKKARA CRIME NO. 208/2005 OF EZHUKONE POLICE STATION , KOLLAM DISTRICT ----- PETITIONER/ACCUSED : ----- HARSHAKUMAR, S/O. KAMARAN, AGED 62 YEARS, KUMAR BUILDINGS, EZHUKONE.P.O., KOTTARAKKARA, KOLLAM DISTRICT. BY ADVS. SRI.T.MADHU SMT.C.R.SARADAMANI RESPONDENT/STATE : ----- THE STATE OF KERALA, THROUGH THE STATION HOUSE OFFICER, EZHUKONE POLICE STATION, KOLLAM DISTRICT, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE.P. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 0104-2014, THE COURT ON THE SAME DAY PASSED THE

FOLLOWING: sts K. Ramakrishnan, J.

===== Crl.M.C.No.1953 of 2014
===== Dated this, the 01st day of April, 2014.

ORDER

This is an application filed by the accused in L.P.No.4/08 in C.C.No.975/05 on the file of the Judicial First Class Magistrate Court, No-I, Kottarakkara, to issue direction to the magistrate to consider and dispose of the bail application under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that on the basis of private complaint filed by the de facto complainant which was forwarded to the police under Section 156(3) of Code of Criminal Procedure, a First Information Report was registered as Crime No.208/05 of Ezhukone Police Station alleging offences under Sections 415 and 420 of Indian Penal Code. After investigation, final report was filed and it was taken on filed as C.C.No.975/05 on the file of the Judicial First Class Magistrate Court, No-I, Kottarakkara and since he did not appear, after complying with the procedure, the case was transferred to register of long pending cases and it is pending before that court as L.P.No.4/08. He was not aware of the proceedings. Now, he came to understand that non-bailable Crl.M.C.No. 1953 of 2014 :

2. : warrant is pending against him. Though he is prepared to surrender before the court below, he apprehends that, he will be remanded and his bail application will not be considered on the same date. So he has no other remedy except to approach this court seeking the following relief: "To direct the Learned Judicial First Class Magistrate's Court-I, Kottarakkara to consider the bail application being filed by the Petitioner in Crime No.208/2005 of Ezhukone Police Station, Kollam District which is now pending as L.P.No.4/2008 in C.C.No.975/2005 on its file and enlarge the Petitioner on bail in the above case on the date of his surrender itself, on such conditions as this Hon'ble Court deems fit and proper in the circumstance of the case, so as to secure the ends of justice." 3. Considering the nature of the relief claimed in the petition, this court felt that the petition can be disposed of at the admission stage itself after hearing the Counsel for the petitioner and the

learned Public Prosecutor.

4. The only apprehension of the petitioner was that if he surrenders before the court below, he will be remanded as warrant is pending against him and his bail application will not be considered by that court on the same date. Crl.M.C.No. 1953 of 2014 :

3. :

5. The application was opposed by the Public Prosecutor on the ground that he was absconding throughout.

6. It is an admitted fact that on the basis of a private complaint filed by the de facto complainant which was forwarded to the police for investigation under Section 156(3) of Code of Criminal Procedure, a crime was registered as Crime No.208/05 Ezhukone Police Station of Kollam District and after investigation, final report was filed and it was taken on file as C.C.No.975/05 and since the petitioner did not appear before the court below, the same was transferred to register of long pending cases as L.P.No.04/08 and it is pending before the Judicial First Class Magistrate Court, No-I, Kottarakkara and L.P.warrant is pending against him. The apprehension of the petitioner that if surrenders before the court below, his bail application will not be considered and disposed of by the court below on the same day appears to be without any basis and that apprehension is not genuine. This court has time and again observed in several applications of this nature that the presiding officers of criminal courts are duty bound to consider and dispose of the bail applications if any filed by the accused persons of their surrender on the date of filing of the Crl.M.C.No. 1953 of 2014 :

4. : application itself unless compelling circumstances warrant the postponement of the same to a future date. So, in fact there is no necessity to issue any direction as sought for. However, considering the apprehensions mentioned in the petition, this court feels that the petition can be disposed of as follows: If the petitioner surrenders before the Judicial First Class Magistrate Court, No-I, Kottarakkara and moves for recalling the L.P. Warrant pending against him and also files an application for release him on bail in L.P.No.4/2008 (Crime No.208/05 of

Ezhukone Police Station) pending before that court, then, the learned magistrate is directed to consider those applications and dispose of the same after hearing the Counsel for the petitioner and the Assistance Public Prosecutor of that court and pass appropriate orders in accordance with the law as far as possible on the same date of filing the application itself. With the 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. Bb [True copy] P.A to Judge

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