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Vimal Kumar Vs. State of Kerala

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Court : Kerala

Decided On : May-26-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Vimal Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY,THE26H DAY OF MAY20145TH JYAISHTA, 1936 Crl.MC.No. 2771 of 2014 () ---------- CC.NO.1016/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I,KOCHI CRIME NO. 11/2012 OF FORT KOCHI POLICE STATION , ERNAKULAM DISTRICT ---------- PETITIONER/1ST ACCUSED: ---------- VIMAL KUMAR, AGED44YEARS, S/O. K.S.GOPALAN, H.NO. 11/241, AMARAVATHY, FORT KOCHI, ERNAKULAM DISTRICT, PIN-682 001. BY ADVS.SRI.C.AJITH KUMAR (KALLESSERIL) SRI.ANTONY KUREETHARA RESPONDENT: ---------- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM (CRIME NO. 11 OF 2012 OF FORT KOCHI POLICE STATION). BY PUBLIC PROSECUTOR SMT. P.MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2605-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts K.RAMAKRISHNAN, J.

---------- Crl.M.C.No.2771 of 2014
---------- Dated this the 26th day of May, 2014

ORDER

This is an application filed by the petitioner seeking direction to the Judicial First Class Magistrate - I, Kochi u/s 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that petitioner is the first accused in Crime No. 1016/2012 of Fort Kochi Police Station which was suo motu registered on the basis of the report submitted by the police officer alleging offence under Section 332 r/w Section 34 of Indian Penal Code. After investigation final report has been filed and it is pending before the Judicial First Class Magistrate -I, Kochi as C.C No.1016/2012. Earlier, he appeared and released on bail. Thereafter, since he obtained employment, he could not appear before the court and participate in the trial. So, non-bailable warrant has been issued against him and proceedings u/s 446 of the Code Crl.M.C No.2771/2014 2 of Criminal Procedure has been initiated against the sureties as well. The petitioner apprehends that if he surrenders before the court below, his bail application will not be considered on the date of filing and he will be remanded to custody as non-bailable warrant has been issued against him. So he has no other remedy except approaching this court to seek the following relief: Direct the Judicial First Class Magistrate Court - I, Kochi to consider and dispose petitioner's application for bail on the date of his surrender itself in C.C No.1016/2012 on the file of Judicial First Class Magistrate Court -I, Kochi, in the interest of justice.

3. Considering the nature of relief claimed in the petition, this court feels that this can be disposed of at the admission stage itself after hearing the Counsel for petitioner and Public Prosecutor.

4. The apprehension raised by the Counsel for petitioner is that in view of the fact that non-bailable warrant has been issued and that is pending against the petitioner, even if he surrenders before the court below he Crl.M.C No.2771/2014 3 will be remanded and the bail application will be considered only later. The application is opposed by the Public Prosecutor on the ground that he jumped bail and he is an absconding accused.

4. Heard both sides.

5. It is an admitted fact that petitioner is the first accused in Crime No. 11/2012 of Fort Kochi Police Station which was registered against the petitioner and others alleging commission of the offence under Section 332 r/w Section 34 of Indian Penal Code. It is also an admitted fact that after investigation, final report has been filed and it is now pending as C.C No.1016/2012 on the file of Judicial First Class Magistrate Court -I, Kochi. It is also in a way admitted in the petition itself that during the earlier period, he had appeared and he was released on bail and later he went abroad and he could not appear, so his bail was cancelled and non-bailable warrant has been issued against him. The apprehension of the petitioner that if he surrenders before the court and moves for bail the bail Crl.M.C No.2771/2014 4 application will not be considered and he will be remanded to custody is without any basis and is not genuine. This court has time and again in several matters of this nature has observed that the presiding officers of the criminal courts are duty bound to consider and dispose of any bail application filed by the accused persons on the date of their surrender as far as possible on the same day itself unless there are compelling circumstances to postpone the same to a future date. So, under such circumstances, there is no necessity to issue a direction as such in this regard as claimed in this petition. However, considering the apprehension raised in the petition this court feels that the petition can be disposed as follows: If the petitioner surrenders before the Judicial First Class Magistrate -I, Kochi and moves for recalling the non-bailable warrant issued against him and also for releasing him on bail in C.C No.1016/2012 (Crime No.11/2012 of Fort Kochi Police Station) pending before that court, then the learned Magistrate is directed to consider and dispose of that application after hearing the Assistant Public Prosecutor of that court in accordance with law, as far as possible, on the date of filing of the application itself. Crl.M.C No.2771/2014 5 With the above direction and observation the petition its disposed of. Office is directed to communicate the direction to the concerned court immediately. K.RAMAKRISHNAN, JUDGE vdv

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