

Adarsh Vs. State of Kerala

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Court : Kerala

Decided On : Jun-26-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Adarsh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 26^H DAY OF JUNE 2014 5TH ASHADHA, 1936 CrI.MC.No. 3451 of 2014 ()
----- CC.NO.434/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KOTHAMANGALAM ----- CRIME NO. 80/2011 OF KOTHAMANGALAM POLICE STATION ,ERNAKULAM DISTRICT
----- PETITIONER/ACCUSED: -----
ADARSH, AGED 38 YEARS, S/O. JOSE, NRAKATHINKAL HOUSE, OLAMATTOM, THODUPUZHA VILLAGE, IDUKKI DISTRICT. BY ADV. SRI. SHINDO VARGHESE
RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT:
----- 1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. JINO, S/O. PAUL, THUDUMAYIL HOUSE, PINDIMANA VILLAGE, KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT. R1 BY PUBLIC

PROSECUTOR SMT. P.MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 2606-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts CrI.MC.No. 3451 of 2014 () -----

APPENDIX PETITIONER(S)' ANNEXURES: -----

ANNEX-1: TRUE COPY OF THE FIR IN CRIME NO.80/2011 OF KOTHAMANGALAM POLICE STATION. ANNEX-2: TRUE COPY OF THE CHARGE SHEET IN CC NO.434/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT. ANNEX-3: CERTIFIED COPY OF THE PROCEEDINGS IN CC NO.434/2011 RESPONDENT(S)' ANNEXURES: NIL /TRUE COPY/ P.A.TO.JUDGE sts K. Ramakrishnan, J.

===== CrI.M.C.No.3451 of 2014

===== Dated this, the 26th day of June, 2014.

ORDER

This is an application filed by the petitioner who is the accused in C.C.No.434/2011 on the file of Judicial First Class Magistrate Court, Kothamangalam, to issue a direction to the magistrate under Section 482 of Code of Criminal Procedure.

2. The case of the petitioner in the petition was that he is the accused in C.C.No.434/2011 originated on the basis of a private complaint filed by the complainant before the magistrate court which was forwarded to the police by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure for investigation and crime was registered as Crime No.80/2011 of Kothamangalam Police Station alleging offence under Section 420 of Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.434/2011 on the file of Judicial First Class Magistrate Court, Kothamangalam. The petitioner earlier appeared and released on bail. Later, he did not appear CrI.M.C.No.3451 of 2014 :

2. : and so his bail was cancelled and non bailable warrant is issued. Now, non-bailable warrant is pending against him. Though the petitioner is prepared to surrender, in view of the pendency of non bailable warrant against him, he

apprehends that, he is likely to be remanded and his bail application will not be considered on the date of filing of the application itself. So, the petitioner has no other remedy except to approach this Court seeking the following relief: "To direct the Judicial First Class Magistrate Court, Kothamangalam to consider the bail application filed by the petitioner in C.C.No.434/2011 before that court on the day itself." 3. Considering the nature of 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. Learned counsel for the petitioner submitted that his only apprehension is that if he surrenders, his bail application will not be considered on the same day and he will be remanded to custody.

5. The petition was opposed by the Public Prosecutor on the ground that the petitioner is an absconding accused. CrI.M.C.No.3451 of 2014 :

3. :

6. It is an admitted fact that the petitioner is the accused in C.C.No.434/2011 on the file of Judicial First Class Magistrate Court, Kothamangalam alleging offence under Section 420 of Indian Penal Code. The petitioner earlier appeared and released on bail. Consequent to the non appearance of the petitioner before the court below, the learned magistrate has issued non-bailable warrant against the petitioner which is pending. The apprehension of the petitioner that, if he surrenders before the court below and moves for bail, he will be remanded and his application will not be considered on the date of filing itself is not genuine and without any basis. This Court has time and again observed in several petitions of this nature that the Presiding Officers of the criminal courts are duty bound to dispose of the bail applications, if any, filed by the accused persons on their surrender on the date of filing of the application itself unless compelling circumstances warrant postponement of the same to a future date. So, in fact, there is no necessity to issue any direction as sought for in the petition. However, considering the apprehension expressed in the petition, this Court feels that the petition can be disposed of as follows: CrI.M.C.No.3451 of 2014 :

4. : If the petitioner surrenders before the Judicial First Class Magistrate Court, Kothamangalam and moves for recalling the warrant and for releasing him on bail in C.C.No.434/2011 (Crime No.80/2011 of Kothamangalam Police Station) now pending before that court, then, the learned Magistrate is directed to consider and dispose of the bail 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. 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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