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Abdul Khader .P Vs. Superintendent

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Court : Kerala

Decided On : Aug-13-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Abdul Khader .P

Respondent : Superintendent

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE13H DAY OF AUGUST201422ND SRAVANA, 1936 Crl.MC.No. 3901 of 2014 () ---------- CMP6812014 of ADDL.CHIEF JUDICIAL MAGISTRATE (E&O),ERNAKULAM ---------- PETITIONER/ACCUSED : ---------- ABDUL KHADER .P587A (15/226), RABIA AJMAS, 3 KAVIYOOR, CHOKLI PANCHAYATH, THALASSERY, KANNUR DISTRICT-670 001. BY ADV. SRI.P.K.ANIL RESPONDENT/COMPLAINANT/STATE : ---------- 1. SUPERINTENDENT CUSTOMS PREVENTIVE UNIT, THIRUVANANTHAPURAM-695001.

2. STATE REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. R1 BY ADV. SRI.P.C.IYPE R2 BY PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON1308-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: BP Crl.MC.No. 3901 of 2014 () APPENDIX PETITIONER'S

ANNEXURES : ANNEXURE I: COPY OF THE BAIL

ORDER
IN CMP NO. 681/2014 ON THE FILE OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE (EO) ERNAKULAM DT63/2014. RESPONDENT'S ANEXURES : NIL. //TRUE COPY// P.A. TO JUDGE BP K. Ramakrishnan, J.

========== Crl.M.C.No.3901 of 2014 ========== Dated this, the 13th day of August, 2014.

ORDER

This is an application filed by the petitioner who is the accused in O.R.No.11/CPU/Tvm.2013-14 of Customs Preventive Unit challenging the conditions imposed by the court below while granting bail to the petitioner under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner has been arrayed as accused in O.R.No.11/CPU/Tvm.2013-14 of Customs Preventive Unit, now pending before Additional Chief Judicial Magistrate (Economic Offences), Ernakulam alleging commission of offence under Sections 135(1)(i) of Customs Act, 1962. The petitioner was arrested and produced before the magistrate court and at the time of his arrest, his passport was also seized by the Customs authorities. He was produced before the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam and he filed Crl.M.P.No.681/14 for bail and the learned magistrate by Annexure I order, granted bail with conditions inter alia that he shall surrender his passport in court unless it has been seized by the investigating officer and he shall not leave India without the leave of that court. These Crl.M.C.No.3901 of 2014 :

2. : two conditions are being challenged by the petitioner.

3. Heard the Counsel for the petitioner and Special Public Prosecutor appearing for the respondent.

4. The Counsel for the petitioner submitted that no contraband articles were seized from his possession and he is having business establishment outside India and if

these conditions are not lifted, he will be put to serious hardship.

5. The Special Public Prosecutor submitted that the investigation is still going on and if the conditions are lifted now, his presence could not be procured for the purpose of interrogation and for adjudication proceedings.

6. It is an admitted fact that while the first accused came from abroad, he was intercepted by the customs authorities and when he was questioned, it was revealed that petitioner is also having some connection with the transactions in which the first accused was arrested. On that basis, the present petitioner was also implicated as accused in the case and he was arrested by the customs authorities and according to the Special Public Prosecutor, when he was questioned, he had surrendered his passport before them and it is in their custody now and during interrogation, it was revealed that he is also having connection in the transaction along with the Crl.M.C.No.3901 of 2014 :

3. : first accused and so, they arrested him and produced before the Additional Chief Judicial Magistrate, (Economic Offences), Ernakulam. Later, the learned magistrate has granted bail as per Annexure I order. The order was dated 06th March, 2014. The adjudication proceedings is on progress and if these two conditions are lifted at present, it will cause hindrance to the smooth progress of the adjudication proceedings that is being conducted by the customs authorities. The presence of the petitioner may be sometimes required for further interrogation as well till the adjudication proceedings are completed. Further, even if the passport is returned, he cannot go abroad without getting the permission of the court. So, the mere release of the passport is not going to help the petitioner. So, the condition directing the petitioner to surrender passport either before the court if it is not already seized by the investigation officer cannot be said to be harsh and I don't think that it is necessary to lift the condition now.

7. The Special Public Prosecutor stated that they have not seized the passport. The fact that it was produced before them when he was arrested and they were in custody of the same and they have not returned the same to the petitioner is not disputed. Then, that will amount to seizing of the Crl.M.C.No.3901 of 2014 :

4. : passport for the time being in the eye of law.

8. As far as the grievance of the petitioner that, unless he is permitted to go abroad, his business establishment in abroad will be affected is concerned, he is at liberty to move the Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam for that purpose seeking permission to go abroad for a temporary period and for that purpose, directing the investigation officer to release the passport to him, then, the learned magistrate shall consider that application and pass appropriate orders taking into consideration the principles laid down in the decision reported in Asok Kumar Vs. State of Kerala [2009 (2) KLT712 on this aspect. 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] PA to Judge

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