

Sajeev Vs. State of Kerala

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Court : Kerala

Decided On : Sep-03-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Sajeev

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 3D DAY OF SEPTEMBER 2014 12TH BHADRA, 1936 CrI.MC.No. 5090 of 2014
----- AGAINST THE

ORDER

/

JUDGMENT

IN L.P.NO. 179/2010 of JUDICIAL FIRST CLASS MAGISTRATE'S COURT-III, PUNALUR C.R.NO. 147/2003 OF PATHANAPURAM EXCISE RANGE OFFICE , KOLLAM

PETITIONER(S)/PETITIONER/ACCUSED:

----- SAJEEV AGED 38 YEARS S/O GOPALAKRISHNAN, AMBALATHUNGAL VEEDU, KADASSERI MURI, PUNNALA VILLAGE, PATHANAPURAM THALUK KOLLAM DISTRICT. BY ADVS.SRI.R.SURAJ KUMAR SRI.SUNIL J.CHAKKALACKAL SMT.V.BEENA

RESPONDENT(S)/RESPONDENT/STATE:

----- THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE THIS
CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 0309- 2014,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Bb CrI.MC.No.
5090 of 2014 ----- APPENDIX PETITIONER(S)' EXHIBITS
----- ANNEXURE- A: TRUE COPY OF THE SAID FINAL
REPORT DATED 14.1.2010 IN C.R.NO.147/2003 OF PATHANAPURAM EXCISE
RANGE IN L.P.NO.179/2010 ON THE FILE OF THE JUDICIAL FIRST CLASS
MAGISTRATE'S COURT-III, PUNALUR. RESPONDENT(S)' EXHIBITS: NIL
----- //TRUE COPY// P.A.TO JUDGE Bb K.
Ramakrishnan, J.

===== CrI.M.C.No.5090 of 2014
===== Dated this, the 03rd day of September,
2014.

ORDER

This Criminal Miscellaneous Case is filed by the petitioner who is arrayed as the first accused in C.R.No.147/2003 of Pathanapuram Excise Range in L.P.No.179/2010 on the file of the Judicial First Class Magistrate Court, No-III, Punalur, to issue direction to the Magistrate under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

2. The case of the petitioner in the petition is that he is the first accused in C.R.No.147/2003 of Pathanapuram Excise Range in L.P.No.179/2010 on the file of the Judicial First Class Magistrate Court, No-III, Punalur alleging offence under Sections 55(g) and 55(i) of the Abkari Act. The allegation against the petitioner is that on 26.12.2003 at 7.10 a.m, the excise party detected 800 liters of wash with utensils in the forest area at Kadasseri Muri, Punnala Village, Pathanapuram Thaluk. The petitioner was arrested and thereafter released on CrI.M.C.No.5090 of 2014 :

2. : bail. Due to non-appearance of the petitioner, non bailable warrant is issued by the court below and the case against the petitioner is transferred to the register of long pending cases as L.P.No.179/2010 on the file of the Judicial First Class Magistrate Court, No-III, Punalur. 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: "i) To direct the Judicial First Class Magistrate- III, Punalur, to enlarge the petitioner on bail in the event of his surrender. OR ii) direct Judicial First Class Magistrate-III, Punalur, to consider the application for bail that would be filed by the petitioner on merits and pass orders on the same day. iii) Such other reliefs that this Hon'ble Court may deem fit and proper in the nature and circumstance of the case." 3. Considering the nature of relief claimed in the petition, this Court felt that the petition can be disposed of at Crl.M.C.No.5090 of 2014 :

3. : 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.

6. It is an admitted fact that the petitioner is the first accused in C.R.No.147/2003 of Pathanapuram Excise Range in L.P.No.179/2010 on the file of the Judicial First Class Magistrate Court No.III, Punalur. The petitioner was arrested and released on bail by the court after remand in judicial custody. But, later, he did not appear and non bailable warrant is issued against the petitioner and the case against him is transferred to the register of long pending cases as L.P.179/2010. 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 CrI.M.C.No.5090 of 2014 :

4. : 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. No direction can be given by invoking Section 482 of Code of Criminal Procedure to the court below to grant bail as it will amount to usurping the power of that court. 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: If the petitioner surrenders before the Judicial First Class Magistrate Court No-III, Punalur and moves for recalling the warrant and for releasing him on bail in L.P.No.179/2010 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. CrI.M.C.No.5090 of 2014 :

5. : 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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