

Radhakrishnan Vs. State of Kerala

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Court : Kerala

Decided On : Nov-07-2014

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Radhakrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA FRIDAY,THE7H DAY OF NOVEMBER201416TH KARTHIKA, 1936 Bail Appl..No. 7909 of 2014 ()
----- O.R. NO. 3/2014 OF KALADY FOREST RANGE OFFICE , ERNAKULAM PETITIONER(S)/2ND ACCUSED:
----- RADHAKRISHNAN AGED52YEARS S/O.PARAMASIVAN, HOUSE NO.186, ERODE TAMIL NADU BY ADV. SRI.P.SHAIJAN JOSEPH RESPONDENT(S)/COMPLAINANT:
----- STATE OF KERALA REPRESENTED BY FOREST RANGE OFFICER KALADY FOREST RANGE, REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM R BY PUBLIC PROSECUTOR, SRI. TOM JOSE THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON0711-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: das B. KEMAL PASHA, J.

===== B.A. No. 7909 of 2014
===== Dated this the 7th day of November,
2014

ORDER

B. KEMAL PASHA, J.

===== B.A. No. 7909 of 2014
===== Dated this the 7th day of November,
2014

ORDER

Petition filed under Section 439 Cr.P.C.

2. Petitioner is the 2nd accused in O.R. No.3 of 2014 of Kalady Forest Range Office, registered for the offences punishable under Sections 2(16)(c), 39(3)(a), 44, 49(b)(iii), 51 and Section 52 of the Wild Life (Protection) Act.

2. The allegation against the petitioner and the other accused is that on 15.10.2014 at 11.30pm, they had attempted to export 25 KG of peacock plumage to Kolalampur through the Nedumbassery International Airport. The petitioner has been in custody for the period -2- B.A. No. 7909 of 2014 from 15.10.2014 onwards.

3. Heard the learned counsel for the petitioner and the learned Additional Director General of Prosecution as well.

4. The learned counsel for the petitioner has pointed out that he is entitled to the protection of the 2nd proviso to Section 44(1) of the Wild Life (Protection) Act, 1972. As per the said proviso, it has been made clear that the said Sub Section shall not apply to the dealers in tail feathers of peacock and articles made therefrom and the manufacturers of such articles.

5. The prosecution has no case that the contraband in question is not tail feathers of peacock. If it is not tail feathers of peacock, the proviso will not apply. When it is admittedly tail feathers of peacock, it prima facie seems that the dealers and

manufacturers of such items are protected. Even though, a case has been forwarded by the learned Additional DGP that the -3- B.A. No. 7909 of 2014 petitioner is not a dealer, I am of the view that the petitioner is in a far more better position than a dealer or manufacturer. The allegation is that he has only transported the materials.

6. Considering the facts and circumstances of the case, the present stage of the investigation and the absence of criminal antecedents on the part of the petitioner, I am of the view that the petitioner can be enlarged on bail.

7. In the result, this Bail Application is allowed and the petitioner shall be enlarged on bail on his executing a bond for 50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum each to the satisfaction of the concerned Judicial First Class Magistrate's Court, and subject to the following terms and conditions:-
(i) The petitioner shall report before the Investigating Officer in between 9 am -4- B.A. No. 7909 of 2014 and 11 am on all Tuesdays and Fridays, commencing from 11.11.2014 for a period of three months or till the filing of the final report in this case, whichever is earlier. (ii) The petitioner shall not tamper with the evidence or influence witnesses. (iii) The petitioner shall make himself available for interrogation as and when required by the Investigating Officer. (iv) The petitioner shall not involve in any offence while on bail. It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail. Sd/- B. KEMAL PASHA JUDGE
das +++ // True copy // PA to Judge

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