

Basil Saju vs the State of Kerala

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Court : Kerala

Decided On : Jan-24-2024

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/218/2024

Appellant : Basil Saju

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA, 1945 CRL.MC NO. 218 OF 2024 CRIME NO.445/2023 OF PUTHENCROUZ POLICE STATION, ERNAKULAM PETITIONER/ACCUSED : BASIL SAJU, AGED 19 YEARS S/O SAJU, PLAPPILLIL VEETIL, KINGINIMATTAM KARA, AIKKARANADU SOUTH VILLAGE, PIN - 682 311. BY ADV SAJEEV KUMAR K.GOPAL RESPONDENT/STATE/COMPLAINANT : 1 THE STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031. 2 THE SUB INSPECTOR OF POLICE PUTHENCROUZ POLICE STATION, PUTHENCROUZ,

ERNAKULAM DISTRICT, PIN - 682 308. SMT.SREEJA V., PP THIS
CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.01.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING: BECHU KURIAN THOMAS, J
..... CrI.M.C. No.218 of 2024
..... Dated this the 24th day of January, 2024

ORDER

Petitioner is the first accused in Crime No.445/2023 of Puthencruz Police Station, alleging offences punishable under Sections 457 and 380 r/w Section 34 of the Indian Penal Code, 1860.

2. Petitioner was granted bail in the said case on 03.07.2023 in

which a condition was imposed that he shall not involve in any offence while on bail. In violation of the said condition, he involved himself in Crime No.997/2023 for the offences punishable under Sections 454, 380 r/w Section 34 of IPC. The learned Magistrate by the impugned order dated 05.12.2023, cancelled the bail granted to the petitioner.

3. Sri.Sajeev Kumar K. Gopal, the learned counsel for the petitioner, submitted that the impugned order has not considered any of the conditions for cancelling the bail.

4. Sri.Noushad K.A., the learned Public Prosecutor, opposed the

application and submitted that the condition imposed was against the commission of any offence and when the said condition has been violated, that by itself is sufficient to cancel the bail. It was further submitted that proceedings under Section 107 of Cr.P.C. as well as the Kerala Anti-Social Activities (Prevention) Act, 2007, have also been initiated against the petitioner.

5. In the decision in Vishnu v. State of Kerala 2023 KLT Online 1250, this Court observed that when the court is called upon to

cancel the bail already granted, it must carry out a summary

enquiry to ascertain whether the allegations raised as a ground to cancel the bail are correct based upon an overall balance of probabilities of the case or whether it is raised only as a ruse to cancel the bail.

6. Petitioner is alleged to be involved in four crimes, of which in

three crimes, bail was granted on 03.07.2023. Despite the above, he involved himself in another crime, as Crime No.997/2023. The offences alleged in the subsequent crime is

similar in nature as well. The learned Magistrate has not considered whether the repeated commission of similar offences has created fear amongst the witnesses in a manner that can prejudice the trial or whether the subsequent crime is falsely foisted in order to cancel the bail. These are matters that ought to have been borne in mind by the learned Magistrate while considering the application for cancellation of bail.

7. A perusal of the impugned order reveals that there is no consideration of any of the circumstances warranting the cancellation of bail.

8. In view of the above, the order dated 05.12.2023 in CMP

No.1461/2023 in Crime No.445/2023 is set aside. The learned Magistrate shall re-consider the application for cancellation of bail afresh, in the light of the observations made above. The Crl.M.C.is allowed as above. sd/- BECHU KURIAN THOMAS JUDGE AMV/24/01/2024 APPENDIX OF CRL.MC 218/2024 PETITIONER ANNEXURES ANNEXURE 1 CERTIFIED COPY OF THE ORDER DATED 05.12.2023 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERRY IN C.M.P.NO.1461 OF 2023 IN CRIME NO.445/2023

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