

Prasanth vs State of Kerala

Prasanth vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1315248

Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/2367/2024

Appellant : Prasanth

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946
CRL.MC NO. 2367 OF 2024 CRIME NO.639/2018 OF BINANIPURAM
POLICE STATION, ERNAKULAM AGAINST THE ORDER/JUDGMENT
DATED IN CC NO.860 OF 2018 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -II, ALUVA PETITIONER(S)/ACCUSED: PRASANTH AGED 43
YEARS S/O. GOPINATHAN NAIR, PUNARJANI HOUSE,
MOOLEPEEDIKA, WEST KADUNGALLOOR, ALANGAD, ERNAKULAM,
PIN - 683110 BY ADVS. K.R.VINOD M.S.LETHA NABIL KHADER JIJO
M.P. DEVIKA S. APARNA SHAJI RESPONDENT(S)/COMPLAINANT:
STATE OF KERALA REPRESENTED BY PUBLIC

PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY ADV.
SMT. SHEEBA THOMAS, PUBLIC PROSECUTOR THIS CRIMINAL
MISC. CASE HAVING COME UP FOR ADMISSION ON 23.04.2024,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Dated this
the 23rd day of April, 2024

ORDER

This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973 (the Code for the sake of brevity).

2. Petitioner is an accused in C.C.No.860/2018 on

the file of the Judicial First Class Magistrate Court - II, Aluva. The above case is charge sheeted alleging offences punishable under Section 323 IPC. Annexure A1 is the Final Report. Now a warrant is pending against the petitioner in the above case.

3. The petitioner submits that he is ready to

surrender before the jurisdictional court. But the apprehension of the petitioner is that, if he surrender before the jurisdictional court, the jurisdictional court may remand him without considering his bail application.

4. The Public Prosecutor submitted that no such

apprehension is necessary and this court may not pass any direction to the lower court to release the petitioner on bail and that is a matter to be decided by the trial court.

5. This court in Vineeth Somarajan @ Ambadi v.

State of Kerala and another (2009 (3) KHC 471) relied on the dictum laid down by another learned Single Judge in Biju S. Praveen v. State of Kerala and Another (2007 (2) KLT 280) considered this point. It will be better to extract the relevant portion of Vineeth Somarajan's case (supra). 14. The apprehension of the petitioner is that if he appears before the Trial Court, he would be remanded to judicial custody. In Biju v. State of Kerala, 2007 KHC 3436 : 2007 (2) KLT 280 : 2007 (1) KLJ 713 : ILR 2007 (2) Ker. 26 : 2007 (1) KLD 486, Justice A. K. Basheer, after noticing the practice that is being followed by some learned Magistrates (vide paragraph 16) held at paragraph 18 thus: '18. As mentioned earlier, Criminal

Courts should always be careful while passing orders on bail applications which in effect deal with personal liberty. In cases where the Court decides to send an accused to custody pending trial, it must be ensured that the Court applies its mind judicially and judiciously with particular reference to the facts and circumstances of the case. The mere fact that the accused had failed to respond to a summons or that the Court had to issue non bailable warrant to compel his presence will not ipso facto empower the Criminal Court to remand the accused to custody as a punitive measure when he appears before the Court on his own volition or is produced in execution of the warrant. The bail application that may be moved on his behalf has to be considered and orders should be passed on the same day itself since personal liberty of an accused cannot be curtailed in a whimsical or disdainful manner.' I am in respectful agreement with the dictum laid down in Biju v. State of Kerala.

6. In the light of the above dictum laid down by

this court, I think the apprehension of the petitioner that the jurisdictional court will remand the accused without application of mind is unnecessary. Therefore, this Criminal Miscellaneous Case is disposed of with the following directions: 1) The petitioner shall surrender before the jurisdictional court within three weeks from today. If an application for bail with advance copy to the prosecutor concerned is filed at the time of surrender by the petitioner, the jurisdictional court shall consider

the same and pass appropriate orders in accordance with law, ideally on the date of surrender itself. 2) In order to enable the petitioner to appear before the court below, coercive proceedings pending against the petitioner shall be kept in abeyance for a period of three weeks. Sd/- P.V.KUNHIKRISHNAN JUDGE DM
APPENDIX OF CRL.MC 2367/2024 PETITIONER ANNEXURES ANNEXURE A1
THE COPY OF THE FINAL REPORT FILED BY

THE INVESTIGATING OFFICER IN C.C.NO.860/2018 BEFORE THE JUDICIAL
FIRST CLASS MAGISTRATE COURT NO.II, ALUVA ANNEXURE A2 THE COPY
OF THE E-COURT PROCEEDINGS OF C.C.NO.860/2018 RESPONDENTS
EXHIBITS: NIL //TRUE COPY// PA TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com