

Sumesh vs State of Kerala

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/3760/2024

Appellant : Sumesh

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
CRIME NO.123/2004 OF Vallikunnam Police Station, Alappuzha
AGAINST THE ORDER/JUDGMENT DATED IN LP NO.11 OF 2024 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KAYAMKULAM
PETITIONER/2nd ACCUSED :- SUMESH, AGED 40 YEARS S/O.
SOMARAJAN,MEENATHETHIL PUTHENVEEDU, KARAZHMA MURI,
VALLIKKUNAM VILLAGE OFFICE,, ALAPPUZHA ., PIN - 690106 BY
ADV RASHEED C.NOORANAD RESPONDENT/STATE :- 1 STATE OF
KERALA REP BY. PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM., PIN - 682031 2 STATION HOUSE OFFICER

VALLIKKUNNAM POLICE STATION, ALAPPUZHA., PIN - 695033
SMT.SEETHA S SR.PP 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.

----- Crl.M.C. No. 3760 of 2024
----- 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. The petitioner is an accused in L.P.No.11 of 2024 of

Judicial First Class Magistrate Court - II, Kayamkulam. The above case is charge sheeted against the petitioner alleging offence punishable under Sections 8(1)(2), 55(a)(g) of the Kerala Abkari Act. Since the petitioner was not able to appear before the lower court, his case was split up and numbered as L.P.No.11 of 2024 and the warrant is pending against the petitioner.

3. The petitioner submits that the petitioner is ready

to surrender before the jurisdictional court and if he surrender before the jurisdictional court, jurisdictional court may remand him without considering their 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 SMA APPENDIX OF CRL.MC 3760/2024
PETITIONER ANNEXURES :- Annexure 1 THE TRUE COPY OF THE FIR NO.123/2004 OF VALLIKKUNNAM POLICE STATION, ALAPPUZHA DATED 11.08.2004. Annexure 2 THE TRUE COPY OF FINAL CHARGE SHEET IN L.P.NO.11/2024 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT DATED 11.08.2004.

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