

**Abdul Azees vs State of Kerala Represented by Public Prosecutor**

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**SooperKanoon Citation :** [sooperkanoon.com/1341349](https://sooperkanoon.com/1341349)

**Court :** Kerala

**Decided On :** May-31-2023

**Judge :** Honourable Mr.Justice K. Babu

**Appeal No. :** Crl.MC/1576/2023

**Appellant :** Abdul Azees

**Respondent :** State of Kerala Represented by Public Prosecutor

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945 AGAINST THE ORDER/JUDGMENTCMP 575/2022 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (POCSO) , KOZHIKODE CRIME NO.641 OF 2022 OF CHEVAYUR POLICE STATION PETITIONER/S: ABDUL AZEES AGED 52 YEARS S/O. MUHAMMED, AGED 52 YEARS, VELLACHALIL HOUSE, PARANNUR P.O., NARIKKUNI, KOZHIKODE, PIN - 673585 BY ADV V.N.RAMESAN NAMBISAN RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 BY PUBLIC PROSECUTOR SHRI G SUDHEER THIS CRIMINAL MISC. CASE

HAVING COME UP FOR ADMISSION ON 31.05.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ..2..

## **ORDER**

The prayer in the Crl.M.C. is to quash Annexure-3

### **order of the Court of the Additional District and Sessions**

Judge, Kozhikode in Crl.M.P.No.575 of 2022 in C.M.C. No.489 of 2022 dated 11.01.2023, to delete or modify the 4th condition in Annexure-1 bail order and to release the passport No.Z4918737 of the petitioner surrendered before the Court of the Addl. District and Sessions Judge (POCSO) Court, Kozhikode.

2. The petitioner is the sole accused in Crime

No.641 of 2022 of Chevayur Police Station. He faces charges under Sections 452, 354A(1)(i) of IPC and Section 10 r/w Section 9(m) of Protection of Children from Sexual Offences Act. The petitioner was granted bail by the Court below as per Annexure -1 order on the following conditions:-

1. Petitioner shall be released on bail on ..3.. executing a bond for Rs.1,00,000/- with two solvent sureties each for the like sum.

2. Petitioner shall not directly or indirectly make

any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade from disclosing such fact to the court or to any police officer.

3. Petitioner shall not tamper with the evidence and shall not influence the witnesses.

4. Petitioner shall not leave India without prior permission from the Court.

5. Petitioner shall not commit offence similar to the offence of which he is accused of.

3. The petitioner filed CMP No.575 of 2022

seeking modification of condition No.4 in Annexure 1 order. The trial Court rejected the application on the ground that after making an attempt to violate the bail condition, the petitioner could not approach the Court with a prayer to lift the same. The said order is impugned in this CrI.M.C. The operative portion of the impugned

**order reads thus:**

9. The petitioner tried to leave India, without getting permission from the Court, as contemplated in the bail order. He was caught by the Emigration ..4..

Department of the Airport with the flight ticket. There is evidence to show that the petitioner tried to violate the condition of the bail order. Such a petitioner cannot approach a Court of law, saying that the 4th condition may be lifted, after making an attempt to violate the bail condition. The bonafide of the petitioner cannot be believed in such circumstances on any situation. Even if the Counsel for the petitioner submitted that the petitioner was not aware of the 4th bail condition, it is not believable at all. The passport was seized by the police while the petitioner tried to go to abroad, violating the 4th bail condition. In such circumstances, the passport of the petitioner cannot be returned to the petitioner, unconditionally, if said request is allowed, certainly he would go abroad even prior to the trial and thus securing his presence during the trial will adversely affect smooth progress of the case and its trial. Hence point is found against the petitioner.

4. The learned Counsel for the petitioner submitted that the petitioner is conducting business at Middle East where his presence is highly required.

5. The learned Public Prosecutor opposed the application on the ground that if the petition is allowed and condition No.4 is lifted, petitioners presence cannot ..5.. be procured during the trial.

6. It is evident that the petitioner in violation of

condition No.4 in Annexure-1 order made an attempt to leave India. Therefore, the prayer of the petitioner to modify the said condition cannot be allowed and hence declined.

7. The trial Court is directed to dispose of C.M.C.

No.489 of 2022, as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this order. The Crl.M.C. is disposed of accordingly. Sd/- K. BABU, JUDGE kkj ..6.. APPENDIX OF CRL.MC 1576/2023 PETITIONER ANNEXURES Annexure-I TRUE COPY OF ORDER DATED 22.11.2022 IN CRIMINAL MISCELLANEOUS CASE NO.489 OF 2022 IN CRIME NO.641 OF 2022 OF CHEVAYUR POLICE STATION Annexure-II TRUE COPY OF THE PETITION FILED

BEFORE THE ADDL. DISTRICT AND SESSIONS JUDGE (POCSO) COURT, KOZHIKODE AS CRL MP NO.575 OF 2022 IN CMC NO.489 OF 2022 IN CRIME NO.641 OF 2002 OF CHEVAYUR POLICE STATION DATED 30.11.2022 Annexure-III CERTIFIED COPY OF THE ORDER DATED 11.01.2023 OF THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE, KOZHIKODE IN CRL MC NO.575 OF 2022 IN CMC NO.489 OF 2022 IN CRIME NO.641 OF 2022 OF CHEVAYUR POLICE STATION

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