

Vijayan Vs. State of Kerala

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Court : Kerala

Decided On : Dec-01-2005

Reported in : 2006(1)KLT77

Judge : K. Thankappan, J.

Acts : Abkari Act - Sections 8(1) and 8(2); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437

Appeal No. : Crl. M.C. No. 3995 of 2005

Appellant : Vijayan

Respondent : State of Kerala

Advocate for Def. : K.J. George, Public Prosecutor

Advocate for Pet/Ap. : Vinoy Varghese Kallumoottil, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Thankappan, J.

1. Petitioner has approached this Court for a direction to the court below to release him on bail on the same day of his appearance in court. Petitioner is the sole

accused in crime No. 45/2004 of Kodukon Police Station registered under Section 8(1) and (2) of the Abkari Act. In the complaint it is alleged that on 8-4-2004 at about 5.20 P.M. the 2nd respondent recovered a kannas containing one litre of spirit from a water course near to the petitioner's house. The investigation of the above case is over and final report has been already filed before the court. The case was numbered as C.P.No. 163/2005 on the file of the Judicial Magistrate of the First Class, Adoor. The petitioner submits that though the case was registered against the petitioner and the investigation is over, no summons has been served on him. The petitioner also submits that now the court below issued non-bailable warrant against him for his non-appearance.

2. Considering the facts and circumstances of the case, this Court finds that the Magistrates are seen issuing non-bailable warrants without serving summons on the accused as contemplated under the Code of Criminal Procedure. Learned Public Prosecutor submits that it may be due to the reason that in the final report it is reported that the accused is not found and absconded and without verifying the remarks made by the investigating officers, the Magistrates have issued non-bailable warrants against the accused. It is pertinent to note that even though the Magistrates are empowered to issue non-bailable warrants in lieu of summons, it should be recorded that the summons could not be served on the accused because of the reasons to be noted in the order issuing non-bailable warrant. There is no satisfactory evidence to show that the police had taken effective steps to make arrest or to serve summons to the petitioner. This Court is of the view that without following the procedure prescribed under the Cr.P.C., the issuance of non-bailable warrant has to be deprecated. The apprehension of the petitioner is that if he appears before the court below, he will be sent to judicial custody. In two decisions reported in *Sukumari v. State of Kerala* 2001 (1) KLT 22 and *Noushad v. State of Kerala*, 2002 (2) KLT SN 116 : 2002 (1) KLJ 606 this Court held that Section 437 Cr.P.C. do not create an absolute bar on the Magistrate to the grant of bail to persons accused of a non-bailable offence or in respect of offences exclusively triable by a Court of Sessions.

3. In the above circumstances, this Court is inclined to allow this case. Hence, the petitioner is directed to file an application for bail within ten days from today. If the

application is filed, as directed above, the court below shall consider the same on the date of appearance of the petitioner. Therefore, the non-bailable warrant issued against the petitioner shall stand recalled.

The case is allowed as above.

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