

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4618 of 2007(B)

C.C. NO.292/2005 OF JFCM - II, PERINTHALMANNA

PETITIONER/ACCUSED:

MUHAMMED ALI,
S/O.ABOOBAKCER HAJI,
AGED 32 YEARS,
PERUVANKUZHIYIL HOUSE,
KAKKAD P.O,THIROORANGADI,
MALAPPURAM DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT/COMPLAINANT:

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE,
THENIPPALAM POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.4618 of 2007

Dated this the 31st day of July, 2007

ORDER

The petitioner is an accused in a prosecution under Section 4 r/w Section 25 of the Arms Act. Altogether there were two accused persons. The co-accused has already been tried, found not guilty and acquitted. As the petitioner was not available, the case against him was spit up. Warrant of arrest has been issued by the learned Magistrate to procure the presence of the petitioner.

2. According to the petitioner, he is absolutely innocent. He submits that the court has already found the co-accused not guilty. The petitioner's failure/omission to appear earlier was not wilful. The petitioner is willing to appear and apply for bail and co-operate with the court for expeditious disposal of the case. But the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. I find no reason justifying or warranting the invocation of the discretion under Section 438 Cr.P.C or the inherent jurisdiction under Section 482 Cr.P.C. It is for the petitioner to appear before the

learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

4. This application for anticipatory bail is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-