

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 28TH DECEMBER 2007 / 7TH POUSHA 1929

CrI.MC.No. 3831 of 2007()

CP.84/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD
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PETITIONERS: ACCUSED

1. SHIBU, S/O.CHANDRA BABU,
KAILAS VEEDU, ERAVIPURAM,
KOLLAM DISTRICT.
2. MANU, S/O.XAVIER,
KARAKKAT BAHAVAN, ERAVIPURAM,
KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENT: COMPLAINANT

STATE OF KERALA REPRESENTED BY
THE CIRCLE INSPECTOR OF POLICE,
NEDUMANGAD POLICE STATION, KOLLAM DISTRICT
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 24/12/2007, THE COURT ON 28/12/2007 PASSED THE
FOLLOWING:

V.K.MOHANAN, J.

Crl.M.C. No. 3831 of 2007

Dated this the 28th day of December, 2007

O R D E R

Petitioners are the accused 4 and 5 in crime No.719/2004 of Nedumangad Police Station, which is now pending as C.P.No.84/2007 before the Judicial First Class Magistrate Court-II, Nedumangad. This Crl.M.C. is filed for a direction to the trial court to release the petitioners on bail in case of their surrender before the trial court in connection with Crime No.719/2004 of Nedumangad Police Station. The allegation against the petitioners is that on 17-10-2004 at about 9.30 P.M. they along with other accused attacked the defacto-complainant and thereby committed offences punishable under sections 143, 147, 148, 149, 447, 324, 307IPC and section 27 of the Arms Act. The petitioners submit that they are innocent and no overt act is alleged against them. It is also submitted that the other accused in the above crime were arrested and final charge has been laid before the court implicating the petitioners as accused 4 and 5. According to the petitioners, they have been falsely implicated in the above crime. It is further stated that they were not aware of

any crime pending against them and they came to know that they are implicated in the crime only when the police constables made enquiries after visiting their house. Therefore, the petitioners have approached this Court by filing this Crl.M.C. with the above prayers.

2. I have heard learned counsel for the petitioner and the learned Public Prosecutor.

3. The learned Public Prosecutor vehemently opposed the relief sought for in this case. The learned counsel for the petitioners submits that no notice has been served on the petitioners and that they were not aware of the pendency of the case. It is also submitted that the petitioners had filed B.A.No.7283/2007 before this Court which was disposed of by directing the petitioners to surrender before the trial court. Now the case of the petitioners is that in case they surrender before the trial court, they are likely to be remanded to judicial custody. It is submitted that the investigation of the above case is already over and the custody of the petitioners are not necessary. In support of the above submission, Annexures-III to V are produced along with the case.

4. On a perusal of Annexures-III to V, I am not in a position to understand the nature and the gravity of the offence alleged in those cases and the circumstances under which the said orders are passed. Hence, I am not inclined to issue an order like Annexures-III to V in this case. Offences under section 307 IPC and section 27 of the Arms Act are involved in this case. The investigating agency has already filed the final report before the court below and the court below had taken cognizance against the petitioners and other accused and the case is now pending as C.P.No.84/2007 before the Judicial First Class Magistrate Court-II, Nedumangad. It has brought out from the documents that the petitioners herein had already approached this Court by filing B.A.No.7283/2007 and this Court has disposed of the said application with a direction to the petitioners to surrender before the court below. Considering the facts and circumstances of the case, I am of the view that this Crl.M.C. can be disposed of directing the petitioners to surrender before the trial court and seek bail.

5. In the result, this Crl.M.C. is disposed of by directing the petitioners to surrender before the Judicial First Class Magistrate Court-II, Nedumangad within two weeks from today and to file

an application for regular bail and in the event of the petitioners surrender and move an application for bail, the same shall be considered and disposed of by the learned Magistrate, preferably on the same day on which it is filed, bearing in mind the dictum laid down in the decision of this Court reported in **Sukumari v. State of Kerala, 2001 (1) KLT 22.**

V.K.MOHANAN, JUDGE.

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