

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN

TUESDAY, THE 31ST DAY OF JULY 2012/9TH SRAVANA 1934

Bail Appl..No. 5394 of 2012 ()

IN CRMC.1701/2012 of D.C & SESSIONS COURT,TRIVANDRUM
IN CMP.1836/2012 of C.J.M.,TRIVANDRUM
IN CRIME NO.615/2012 OF VALIYATHURA POLICE STATION, THIRUVANANTHAPURAM

ACCUSED(S)/1ST ACCUSED:

KUMARI THARSHIKA,, AGED 20 YEARS
D/O. MANGALESWARY, NO.502, EZHAMPURAM ROAD, TRINCOMALI
SRILANKA.

BY ADV. SRI.D.KISHORE

COMPLAINANT(S)/STATE :

1. STATE OF KERALA,
REPRERSENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE,
CRIME DETACHMENT, THIRUVANANTHAPURAM CITY.

BY PUBLIC PROSECUTOR SMT. JASMINE V.H.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
31-07-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ds

N.K. BALAKRISHNAN, J.

B.A. No: 5394 of 2012

Dated this the 31st day of July, 2012

ORDER

The petitioner is the 1st accused in Crime No:615/2012 of Valiyathura Police Station, Thiruvananthapuram District. The offences alleged are under section 419 r/w 34 of IPC and sections 12(1)(b) and (d) of Passports Act, 1967. The petitioner has been in custody since 23.05.2012. Hence, the petitioner claims regular bail.

2. The petitioner is a Sri Lankan National. She was the holder of Swedish Passport No:80967177 issued to her on 16.04.2010 from Polismyndigheten i sodermanlands Lan. She arrived at 3.30 a.m. on 22.05.2012 by Emirates Flight No:EK 552 from Dubai. It was found that the photograph in the Passport and Visa did not tally with that of the passenger and so she was refused entry to Dubai due to impersonation. The duty officer, Immigration, Thiruvananthapuram, perused the Passport and Visa of the

passenger, the petitioner herein, and found that the photograph of the person found in the passport was different from that of the petitioner. It could be gathered that her elder brother was in Norway and she wanted to go to Sweden. As per her request, her brother had arranged the Swedish Passport with the help of an agent Sudarasanan at Colombo, Sri Lanka. It is alleged that the petitioner's brother had paid Rs.20 lakh to the agent for that Passport. On 06.05.2012, as per the direction of the agent, the petitioner came to Chennai by Air India flight. It seems, she was also having a Sri Lankan Passport and it was with that Passport, immigration clearance was had at Sri Lankan Airport. On 20.05.2012 she left for Thiruvananthapuram by Air India flight. She stayed in a hotel till 21.05.2012. Thereafter, she went to Thiruvananthapuram International Airport, collected her boarding pass and boarded Emirates flight. When she reached Dubai, immigration authorities

got suspicion about the photograph in the Passport and so she was deported.

3. The learned counsel for the petitioner submits that though she is entitled to get bail under section 167(2) of Cr.P.C., she has been denied bail for the sole reason that she is a Sri Lankan national.

4. The learned Public Prosecutor submits that the petitioner is not having any valid travel document/Visa or any Passport issued by the Indian Government and so the moment she is granted bail and goes out of jail, she would be committing offence under the Foreigners Act, 1946. Therefore, unless the petitioner is able to obtain Visa or any other valid travel document to be in Indian soil, the petitioner cannot be released from jail, though the petitioner may be entitled to Statutory bail under section 167(2) of Cr.P.C.

5. The learned counsel for the petitioner submits that as per section 3(2)(f) of the Foreigners Act, 1946, an order can be passed to the effect that the foreigner shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions. But the learned Public Prosecutor submits that, that is the order to be passed by the Central Government as can be seen from section 3(1) of the Act and it does not pertain to a case where the accused has committed offence and is in judicial custody pertaining to that case. It may be possible for the petitioner, through her near relatives, to approach the Sri Lankan Embassy in India for better assistance so as to secure travel document in lieu of the Passport and the Visa endorsement so as to enable her to stay in India without offending the provisions of the Foreigners Act, 1946.

6. Considering all the aspects, the petitioner is granted bail subject to the following conditions:

- (i) The petitioner shall execute a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent Indian sureties each for the like sum to the satisfaction of the learned Magistrate. Sureties shall produce their original title documents or other original documents to prove their solvency.
- (ii) The accused shall appear before the Investigating Officer on all Mondays between 9.30 AM to 11.30 AM until further orders.
- (iii) The accused shall not commit any offence and 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 him from disclosing such facts to the court or to any police officer or tamper with the evidence.

- (iv) The petitioner shall not leave Thiruvananthapuram city without the permission of the learned Magistrate.
- (v) The petitioner shall furnish the building number and other particulars where the petitioner would be residing after she is released on bail to the Investigating Officer.
- (vi) The petitioner shall also furnish the land phone number of the building and also her mobile number to the Investigating Officer.
- (vii) The learned Magistrate will also ensure the identity of the sureties by insisting production of electoral photo identity cards/Driving licence etc.

7. It is made clear that the petitioner shall be released from jail only on production of the valid travel document/passport and Visa issued by a competent authority.

Sd/-
N.K. BALAKRISHNAN,
JUDGE

//True Copy//

P.A. to Judge

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