

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

SATURDAY, THE 31ST DAY OF MAY 2014/10TH JYAISHTA, 1936

Crl.MC.No. 2913 of 2014 ()

CC.NO.484/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,KOLENCHERRY

PETITIONER/ACCUSED:

**C.MANIMARAN,S/O.CHINNARAJ,AGED 43,
VETTIPARAMBIL HOUSE, N.K.SREEDHARAN ROAD,
NEAR KATTUNGAL BHAGAVATHY TEMPLE,
PACHALAM, KOCHI-16.**

BY ADV. SRI.SAKIR.K.H.

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. P.MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 31-05-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

CRMC.NO.2913/2014

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX A1 COPY OF THE CERTIFICATE DATED 26/05/2014 ISSUED BY DR.T.A.R
AKBAR ALI, RETIRED JOINT DIRECTOR OF HEALTH SERVICES, KARUR
DISTRICT, TAMIL NADU.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

K.RAMAKRISHNAN, J.

Crl.M.C.No.2913 of 2014

Dated this the 31st day of May, 2014

ORDER

This is an application filed by the petitioner who is the accused in C.C.No.484/2014 on the files of the Judicial First Class Magistrate's Court, Kolencherry to issue direction under Section 482 of the Code of Criminal Procedure (hereinafter referred as the 'Code')

2. It is alleged in the petition that he is a sole accused in C.C.No.484/2014 now pending before the Judicial First Class Magistrate's Court, Kolencherry. The case was originally taken on file earlier as C.C No.543/2008 in which he was shown as the 3rd accused alleging offences under Section 394 of the Indian Penal code (for short the 'IPC') along with other accused persons and as per the order under Crl.M.C.No.933/2008 of Sessions Court, Ernakulam, he was granted anticipatory bail and he executed the bail bond and he was appearing regularly. Thereafter he could not appear, as he will have to attend his father who fell ill. Case

against one of the accused was tried and disposed of and the case against other accused persons including the petitioner was split up and refiled as C.C.No.484/2014. Since the petitioner has not appeared, non bailable warrant has been issued against him. Though he is prepared to surrender and co-operate with the trial of this case, he apprehends that the lower court will not consider his bail application on the date of filing itself and he will be remanded to custody. So he has no other remedy except to approach this Court seeking the following relief.

"to direct the Judicial First Class Magistrate's Court, Kolencherry to consider the bail application which would be filed by the petitioner/accused in C.C.No.484/2014 and pass orders thereon on the date of his surrender itself"

3. Considering the relief claimed in the petition, this Court felt that the petition can be disposed of at the admission stage itself after hearing the counsel for the petitioner and the learned Public Prosecutor.

4. The counsel for the petitioner submitted that though he is prepared surrender and move for bail, since non bailable warrant is pending, he will be remanded to custody without considering his bail application. Unless a direction is given, the learned Magistrate will not consider the bail application on the date of filing the application itself.

5. The application was opposed by the learned Public Prosecutor on the ground that he is an absconding accused.

6. It is an admitted fact that he was charge sheeted by the police along with two other persons for commission of offence under Section 394 of the IPC and earlier the case was taken on file as C.C.No.543/2008 on the file of the Judicial First Class Magistrate's Court, Kolencherry and the petitioner was granted anticipatory bail by the Sessions Court, Ernakulam as per Crl.M.C. 933/2008 dated 04/06/2008. He was released on bail earlier. But later he did not appear. The case against one of the accused person who was regularly appearing was

disposed of by the learned Magistrate. The case against the other two accused persons including the petitioner was split up and re-filed as C.C.No.484/2014 and non bailable warrant has been issued against him and it is pending.

7. The apprehension of the petitioner that if he surrenders before the court below, he will be remanded without considering the bail application filed by him by the learned Magistrate is baseless and not genuine. This court has time and again in several cases of this nature expressly observed that Presiding Officer of the Criminal court are duty bound to consider in dispose of bail applications filed by the accused persons on their surrender as far as possible on the date of filing of the application itself unless compelling circumstances warrant postponement of the same to a future date. So there is no necessity to issue any direction as such as claimed in the petition. However considering the apprehension raised in the petition, this Court feels that the petition can be disposed of as follows:

If the petitioner surrenders before the Judicial First Class Magistrate's Court, Kolencherry and moves for recalling the warrant and release him on bail in C.C.No.484/2014 pending before that court, then the learned Magistrate is directed to consider and dispose of the bail application, after hearing the Assistant Public Prosecutor of that court, as far as possible on the date of filing of the application in accordance with law.

With the above direction and observation, the petition is disposed of.

Office is directed to communicate this order to the concerned court immediately.

**Sd/-K.RAMAKRISHNAN
JUDGE**