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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

FRIDAY, THE 11TH DAY OF JUNE 2021 / 21ST JYAISHTA, 1943

CRL.MC NO. 2695 OF 2021

IN CRIME NO.1274/2020 OF POLICE STATION OF ELAVUMTHITTA,
PATHANAMTHITTA DISTRICT.

PETITIONER/ACCUSED NO.1:

ARUN BABY
AGED 29 YEARS
S/O. BABY, KUTIPLACKAL VEEDU, PRAKKANAM MURI,
CHENNERKARA VILLAGE, KOZHENCHERRY TALUK,
PATHANAMTHITTA-689652.

BY ADVS.
MANU RAMACHANDRAN
M.KIRANLAL
R.RAJESH (VARKALA)
T.S.SARATH
SAMEER M NAIR

RESPONDENTS/STATE & INVESTIGATING OFFICER:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.
- 2 THE STATION HOUSE OFFICER
POLICE STATION OF ELAVUMTHITTA, PATHANAMTHITTA
DISTRICT-689507.

SRI.M.R.DHANIL PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
08.06.2021, THE COURT ON 11.06.2021 DELIVERED THE
FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J

CrI.M.C.No.2695 of 2021

Dated this the 11th day of June, 2021

ORDER

Granting permission to an accused to go abroad for employment very often involves resolution of conflicting interests. On the one side, the court has to ensure that the legal process reaches its normal culmination. The interest of the prosecution has to be protected. Trial of the case cannot be allowed to be impeded. On the other side, the right of the accused to carry on his occupation or profession cannot be curtailed.

2. The petitioner is the first accused in the case registered as Crime No.1274/2020 of Elavumthitta police station. The offences alleged against him are punishable under Sections 498A and 506(i) of the Indian Penal Code.

3. The Court of Session, Pathanamthitta granted anticipatory bail to the petitioner. It is stated that, in compliance with the order passed by the Court of Session, the petitioner appeared before the Magistrate's Court concerned and he was released on bail.

4. After completing the investigation, the police filed final report against the petitioner in the Magistrate's Court concerned but it was returned defective. It is stated that the investigating officer has not re-submitted the final report.

5. The petitioner is a person employed as General Electrical Engineer in the United Arab Emirates (UAE). The visa granted to him would expire on 15.07.2021. It is necessary for him to return to U.A.E sufficiently early. He has prayed that he may be granted permission to go to U.A.E to rejoin duty there.

6. Heard learned counsel for the petitioner and the learned Public Prosecutor.

7. Learned counsel for the petitioner submitted that, while granting bail, the Court of Session has not imposed any condition

that the petitioner shall obtain prior permission of the court to go abroad. Learned counsel submitted that, as a law abiding citizen, in order to avoid difficulties in future, the petitioner is seeking permission from the court to go abroad for his work.

8. Learned Public Prosecutor submitted that the investigation of the case was completed and charge-sheet against the petitioner was filed but it was returned as defective by the court concerned.

9. Section 317(1) of the Code of Criminal Pocerure, 1973 (for short 'the Code') states that, at any stage of an inquiry or trial under the Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

10. The normal rule is that evidence in a case shall be taken in the presence of the accused. However, even in the absence of the accused, evidence can be taken but then his counsel must be present in the court, provided the accused has been granted exemption from attending the court. If the progress of the trial can be achieved even in the absence of the accused, the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence (See **Bhaskar Industries Limited v. Bhiwani Denim and Apparels Limited : AIR 2001 SC 3625**).

11. True, the above principles were laid down by the Apex Court in dealing with a summons case. However, in **Puneet Dalmia v. C.B.I : AIR 2020 SC 214**, it has been observed as follows:

"However, the principles for grant of exemption as observed by this Court in the case of Bhaskar Industries Ltd (supra) can be made applicable to the facts of the case on hand also and the appellant can be granted the exemption on certain conditions and on filing an undertaking by the appellant, by which the interest of justice can be protected and grant of exemption may not ultimately affect the conclusion of the trial at the earliest".

At this juncture, it is to be noted that the offences alleged against the accused in the above case were punishable under Section 120B read with Sections 420 and 409 IPC and Sections 9, 12 and 13(1)(c) read with 13(2) of the Prevention of Corruption Act.

12. The decisions referred to above would show that, if the Court is satisfied that, in the interests of justice, the personal attendance of an accused before it need not be insisted on, then

the court has the power to dispense with his attendance. If a court feels that insisting on the personal attendance of an accused in a case would be too harsh, the court can grant appropriate relief to him.

13. In **Noorjahan v. Moideen : 2000 (2) KLT 756**, this Court has held that, in appropriate cases, the Court has the discretionary power to exempt the personal appearance of the accused even in warrant cases and to have the plea of the accused recorded through his counsel, who is specifically authorised for that purpose. The decision in **Noorjahan** has been followed in **Raju v. State of Kerala (2009 (3) KHC 14)**.

14. In the instant case, the offences alleged against the petitioner are punishable under Sections 498A and 506(i) of the Indian Penal Code. There will not be any need for the prosecution witnesses to identify him in the court as the offender. If the petitioner undertakes that he would appear before the trial court on all hearing dates as may be specifically directed by that court, he can be exempted

from personal appearance before the court and he can be allowed to be represented through counsel and permission can be granted to him to leave the country for employment.

15. True, the petitioner had not moved the Magistrate's Court concerned seeking appropriate relief. But, considering the fact that the regular functioning of the lower courts has been practically paralysed at many places in the State due to the pandemic Covid-19, thereby preventing access to justice by the citizens, in order to secure the ends of justice, appropriate relief can be granted to the petitioner by this Court by exercising the power under Section 482 of the Code.

16. Consequently, the petition is allowed and it is ordered as follows: The petitioner is granted permission to go abroad for employment purposes on the condition that he shall file an undertaking in the form of affidavit in the Magistrate's Court concerned that he would appear before that court as and when required by that court. He shall engage a counsel to appear before the trial court on all hearing dates. The affidavit shall also

contain an undertaking that the counsel engaged by him would appear before the trial court on his behalf on each and every date of hearing and that the petitioner shall not object to the recording of the evidence in his absence and that no adjournment shall be asked for on his behalf.

(sd/-) **R.NARAYANA PISHARADI, JUDGE**

jsr

APPENDIX OF CRL.MC 2695/2021

PETITIONER'S ANNEXURES:

- ANNEXURE A1 THE TRUE COPY OF THE FIR IN CRIME
NO.1274/2020 OF POLICE STATION OF
ELAVUMTHITTA, PATHANAMTHITTA DISTRICT
ALONG WITH THE PRIVATE COMPLAINT.
- ANNEXURE A2 THE TRUE COPY OF THE ORDER DATED
26.3.2021 IN CRL.MP.NO.640/2021 OF
SESSIONS COURT, PATHANAMTHITTA.
- ANNEXURE A3 THE TRUE COPY OF THE RELEVANT PAGES OF
INDIAN PASSPORT NO.L2921014 OF THE
PETITIONER DATED 19.6.13.

RESPONDENT'S ANNEXURES:

NIL

TRUE COPY

PS TO JUDGE