

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 12TH DAY OF OCTOBER 2023 / 20TH ASWINA, 1945

CRL.MC NO. 7666 OF 2023

CRIME NO.991/2023 OF Adoor Police Station, Pathanamthitta
AGAINST THE ORDER/JUDGMENT IN CMP NO.4855/2023 OF JUDICIAL FIRST
CLASS MAGISTRATE COURT, ADOOR

PETITIONER/1ST ACCUSED:

ASHIQ SULTHAN, AGED 25 YEARS

BY ADVS.
M.R.SARIN
PARVATHI KRISHNA
SAUMYA.P.S
LEKSHMI S.R
P.SANTHOSHKUMAR (KARUMKULAM)
AJI S.
ANASWARA DEEPTHI.V.V.
ANJU THOMAS.M

RESPONDENT/DEFACTO COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

PP SRI.JACOB E SIMON

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
12.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ZIYAD RAHMAN A.A, J.

Crl.M.C.No.7666 of 2023

Dated this the 12th day of October, 2023

O R D E R

This Crl.M.C is filed challenging the Annexure-A3 order passed by the Judicial First Class Magistrate, Adoor, in CMP No.4855/2023 in Crime No.991/2023 of Adoor Police Station. The petitioner is the first accused in the said crime, registered by the police for the offence punishable under Section 498A of the Indian Penal Code (IPC).

2. The petitioner earlier moved this Court seeking anticipatory bail, which was granted by this Court as per Annexure-A2 order on 04.08.2023 with conditions. As per one of such conditions, the petitioner was directed to surrender before the investigating officer within a period of three weeks from the date of receipt of a copy of the said order. As per condition No.(iv), he has to appear before the investigating officer every Saturday till the filing of the final report. The condition No.(viii) was that the petitioner should not leave India without the permission of the jurisdictional court.

3. The aforesaid CMP was submitted by the petitioner

before the learned Magistrate, seeking permission to go abroad, as, according to him, he is studying abroad in Australia for the course of “MSC Logistic and Supplying Chain Management” conducted by the University of Royal Melbourne Institute of Technology. The petitioner moved the application for anticipatory bail when he came to India in connection with the surgery of spinal code. Now, he has to return to Australia to continue the said course. However, the learned Magistrate rejected the prayer sought by the petitioner as per Annexure-A3 order, and this application is submitted in such circumstances.

4. Heard Sri.Sarin Panicker, learned counsel, appearing for the petitioner and Sri.Jacob E.Simon, the learned Public Prosecutor for the State.

5. I have carefully gone through the records. This Court, as per the order dated 27.09.2023, already modified condition No.(iv), which necessitates the appearance of the petitioner before the investigating officer every Saturday.

6. One of the grounds on which the learned Magistrate dismissed the application submitted by the petitioner was that if the application submitted by the petitioner is allowed it

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would be a violation of condition No.(iv) imposed by this Court. Now, as the fourth condition is already deleted, that cannot operate as a bar. The remaining condition No.(viii) necessitates the permission of the jurisdictional court for leaving India. Even though an application was submitted in this regard, it was rejected by the learned Magistrate, by observing that the investigation was not over.

7. However, it is evident that, since the date of the surrender, he has been cooperating with the investigation and interrogation of the petitioner is already over. Apparently, no recovery is also to be affected. Therefore, I am of the view that, merely because the police have not submitted the final report, he need not be deprived of his right to go abroad to pursue his studies. Therefore, I am of the view that the prayer sought by the petitioner can be granted by imposing appropriate conditions to ensure that he will appear before the jurisdictional court or before the investigating officer as and when required.

In such circumstances, this CrI.M.C is allowed, Annexure-A3 order is hereby set aside, and the petitioner is granted permission to go abroad subject to the following

conditions:

(I) The petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional court, and one of the sureties shall be a close relative of the petitioner;

(ii) The petitioner shall undertake before the jurisdictional court that he shall appear before the investigating officer or the jurisdictional court as and when required;

(iii) The petitioner shall furnish the address of the petitioner abroad, email address and mobile numbers through which he can be contacted.

With the above observations, this Crl. M.C is disposed of.

Sd/-

ZIYAD RAHMAN, A.A, JUDGE

R.AV

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APPENDIX OF CRL.MC 7666/2023

PETITIONER'S ANNEXURES

- Annexure A1 THE TRUE COPY OF FIR IN CRIME NO. 991/2023 OF ADOOR POLICE STATION, PATHANAMTHITTA.
- Annexure A2 THE TRUE COPY OF THE ORDER IN B.A 6145/2023 OF HON'BLE HIGH COURT OF KERALA.
- Annexure A3 THE TRUE COPY OF THE ORDER PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR IN CMP NO 4855/2023 DATED 16/9/2023.
- Annexure A4 THE TRUE COPY OF THE CMP NO 4855/2023 FILED BY THE PETITIONER BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR.
- Annexure A5 THE TRUE COPY OF OVERSEAS STUDENT CONFIRMATION BY DEPARTMENT OF EDUCATION , SKILLS AND EMPLOYMENT AUSTRALIAN GOVERNMENT DATED 29.07.2021