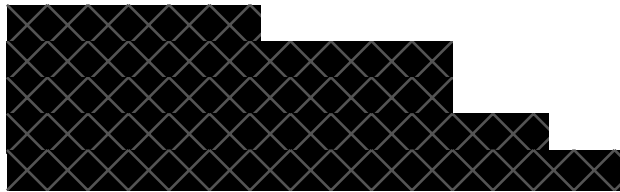


IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
THURSDAY, THE 25TH DAY OF JANUARY 2024 / 5TH MAGHA, 1945
CRL.MC NO. 821 OF 2024
CRIME NO.579/2022 OF PANGODE POLICE STATION, THIRUVANANTHAPURAM
IN C.P.NO.41/2023 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -II, NEDUMANGAD

PETITIONER/ACCUSED:

RAHUL .R



BY ADVS.
MANSOOR.B.H.
SAKEENA BEEGUM

RESPONDENTS/COMPLAINANT/STATE:

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

- 2 STATION HOUSE OFFICER
PANGOD POLICE STATION,
THIRUVANANTHAPURAM DISTRICT, PIN - 673008

BY ADV.
M.C. ASHI,
PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
25.01.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

BECHU KURIAN THOMAS, J.

Crl.M.C.No.821 of 2024

Dated this the 25th day of January, 2024

ORDER

Petitioner challenges the non-bailable warrant issued against him in C.P. No.41/2023 on the files of the Judicial First Class Magistrate Court-II, Nedumangad.

2. Sri. Mansoor B.H, the learned counsel for the petitioner contended that even without issuing a summons, the learned Magistrate had issued a non bailable warrant based on the statement in the final report that petitioner had not co-operated with the investigation from the crime stage itself. The learned counsel pointed out that the said procedure adopted by the learned Magistrate is contrary to the judgment of the Supreme Court in ***Satendar Kumar Antil Vs. Central Bureau of Investigation and another*** [2021 (10) SCC 773].

3. I have heard Sri. Ashi M.C, the learned Public Prosecutor as well.

4. Petitioner has pleaded that he is arrayed as an accused for the offences under Sections 323, 324, 341, 308 and 427 r/w Section 34 of the Indian Penal Code, 1860. Punishments for each of the above sections are tabulated as below;

Section	Punishment
Section 323 of IPC	One year with fine
Section 324 of IPC	Three years with fine
Section 341 of IPC	One month with fine
Section 308 of IPC	Seven years with fine
Section 427 of IPC	Two years with fine

5. It is evident from a perusal of the above tabular column that the maximum punishment amongst all the sections alleged against the petitioner is imprisonment up to seven years for the offence under Section 308 of IPC. In **Satendar Kumar Antil Vs. Central Bureau of Investigation and another** [2021 (10) SCC 773], the Supreme Court had categorized cases and guidelines were laid down. Four categories were specified of which Category-A dealt with offences punishable with imprisonment of 7 years or less which do not fall within the special statutes or economic offences.

6. Petitioner undoubtedly falls within Category-A and the following procedure is required to be followed.

Category-A

After filing of charge-sheet/complaint taking of cognizance

- a) *Ordinary summons at the 1st instance/including permitting appearance through Lawyer.*
- b) *If such an accused does not appear despite service of summons, then Bailable Warrant for Physical appearance may be issued.*
- c) *NBW on failure to appear despite issuance of Bailable Warrant.*

- d) *NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.*
- e) *Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.*

7. The intention behind providing the above category of cases is to avoid the unreasonable action of issuing a non-bailable warrant against the accused without even verifying whether they had actually been served with summons or whether they have been prevented from co-operating with the investigation for any reasons beyond their control. These directions are required to be complied with in letter and spirit and cannot be ignored or avoided by a mere statement in the final report that the accused had not co-operated with the investigation or had absconded. Even in such cases, the Magistrates are bestowed with the duty to ascertain whether the accused had intentionally kept himself aloof from the proceedings.

8. A perusal of the proceedings on 26.09.2023, in the instance case, reveals that the learned Magistrate had proceeded to issue a non-bailable warrant to the accused for the reason mentioned in the final report that the third accused had not co-operated with the investigation during the crime stage and that he absconded immediately after the incident, so that, Police could not arrest him.

9. Though reference has been made by the learned Magistrate to the nature of injury and the nature of overt act committed by the accused, I am of the view that the learned Magistrate hastily came to the conclusion that even if the summons is issued, presence of A3 cannot be ensured before the court. According to me Category-A cases specified in **Satendar Kumar Antil's** Case (supra), require an ordinary summons to be issued at the first instance and permission can even be granted for appearance through a lawyer and if the accused does not appear despite service of summons, a bailable warrant has to be issued initially and if even after the bailable warrant, there is failure to appear, only then should a non-bailable warrant be issued. All these procedures are intended to ascertain whether the accused had consciously avoided from appearing before the court. Of course, in appropriate cases, the Magistrate can issue non bailable warrants to the accused. However, such instances must be confined to exceptional situations.

10. Considering the nature of allegations and the circumstances of the case, this Court is of the opinion that, the non-bailable warrant issued to the petitioner was not proper. However, since the petitioner has expressed his willingness to appear before the learned Magistrate and take bail, I am of the view that an opportunity can be granted to do so without the threat of a remand looming over his head.

11. Therefore, there will be a direction to the Judicial First Class Magistrate Court-II, Nedumangad, in C.P.No.41/2023 that, if any

Crl.M.C.No.821 of 2024

-:6:-

application for recall of warrant and for grant of bail is filed by the petitioner, the same shall be considered positively, on the same day itself, provided petitioner files the application within 15 days from today.

Criminal miscellaneous case is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

Jka/25.01.24.

APPENDIX OF CRL.MC 821/2024

PETITIONER'S ANNEXURES

Annexure

COPY OF THE CASE STATUS OF PROCEEDINGS IN
C.P 41/2023 OF JUDICIAL FIRST CLASS
MAGISTRATES COURT-II, NEDUMANAGAD.