



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. 786 OF 2024

AGAINSTSC 921/2018 OF ADDITIONAL SESSIONS COURT - VIII,
ERNAKULAM

PETITIONER/ACCUSED:

JHONNY ALEXANDER DURAN SOLA
AGED 40 YEARS, S/O DANIEL DURAN ANAYA
PERMANENTLY RESIDING AT BARRIO SAN JACINTO,
COLONIA HARRIZON, CALLE LARA,
#106, SAN SALVADOR, EL SALVADOR
PRESENTLY DETAINED AT TRANSIT HOME (SHERIN NIVAS),
MAYYANADU, KOTTIYAM,
KERALA, PIN - 691571

BY ADV NIHARIKA HEMA RAJ

RESPONDENTS/COMPLAINANTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY,
DEPARTMENT OF SOCIAL JUSTICE,
VIKAS BHAVAN,
THIRUVANANTHAPURAM, PIN - 695033
- 2 UNION OF INDIA
REPRESENTED BY THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
COCHIN SUB ZONE,
KOCHI, PIN - 682037
- 3 FOREIGN REGIONAL REGISTRATION OFFICER (FRRO)
COCHIN INTERNATIONAL AIRPORT,
2ND FLOOR, AIRLINES BUILDING,
NEDUMBASSERY, PIN - 683111
- 4 HOME MANAGER
TRANSIT HOME (DETENTION CENTRE),
MAYYANADU, KOTTIYAM,
KOLLAM, PIN - 691571

SRI.NOUSHAD K.A., 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. 786 of 2024

Dated this the 25th day of January, 2024

ORDER

Petitioner was the accused in S.C.No.921 of 2018 before the Additional Sessions Court -VIII Ernakulam. Petitioner is a citizen of El Salvador and was indicted for the offences under Section 8(c) r/w Sections 21(c), 23(c), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. By judgment dated 22-07-2021, the learned Session Judge acquitted him. Despite his acquittal, his liberty remained curtailed as he continued to remain in prison. By judgment dated 22-10-2021 in W.P.(C) No.18731/2021, this Court directed the petitioner to be shifted to a detention centre till he is deported from India as he did not have sufficient travel documents. In the meantime, Crl.Appeal No.655/2021 filed by the State was also dismissed by judgment dated 30-10-2023. Petitioner had to approach this Court once again, in W.P.(C) No.7661/2023, wherein a direction was issued on 13-04-2023 to the Foreigners Registration Officer to proceed ahead with deportation of the petitioner to El Salvador.



3. The woes of the petitioner did not end even after all these directions. He is compelled to approach this Court once again, through this writ petition. Petitioner is about to be deported to his country on 31-01-2024. However, various documents, including his passport, certificate of vaccination, driving license, and currency notes, which were seized at the time of his arrest, are retained with the Sessions Court Ernakulam. On 06-12-2023, in CrI.M.P. No.5390/2023 in S.C. No.921/2018, the Sessions Court directed return of all those articles to the petitioner. Unfortunately, petitioner cannot collect the articles as he cannot move around any place in India and he is in the Transit Centre at Mayyanadu, Kottiyam.

4. Today, when the matter was taken up, petitioner appeared online and stated that he authorizes his Advocate appearing for him before this Court to receive all those materials on his behalf. Sri. K. A.Noushad, the learned Public Prosecutor, appearing on behalf of respondents 1 and 4, submitted that the said respondents have no objection in the Advocate of the petitioner collecting the articles from Court provided, they are handed over to the petitioner with endorsement from the 4th respondent before the petitioner leaves the country.

5. Adv. Niharika Hema Raj appearing for the petitioner graciously submitted to the Court that, due to the peculiar circumstances and



considering that the liberty of the individual is at stake, she is willing to accept the materials on behalf of the petitioner, though she has not filed a Vakalat and is appearing in this case on the basis of memo of appearance. Since the petitioner has appeared online and has personally authorised Adv. Niharika Hema Raj, to collect the articles on his behalf, this Court is of the view that circumstances have arisen to invoke the inherent jurisdiction of this Court to accord sanction to the counsel for the petitioner to receive the articles on his behalf and to handover the same to the petitioner.

6. In the above circumstances, the Session Court, Ernakulam is directed to handover all the articles, materials, and currency notes specified in its order dated 06-12-2023 in CrI.M.P. No.5390/2023 in S.C.No.921/2018 to Adv. Niharika Hema Raj immediately. On receipt, the Advocate shall hand over all those articles to the petitioner after obtaining endorsement from the 4th respondent at the Transit Centre at Mayyanadu, Kottiyam, at the earliest, at any rate, before the petitioner departs from India on 31-01-2024.

The criminal miscellaneous case is disposed of as above.

BECHU KURIAN THOMAS
JUDGE

AJM



APPENDIX

PETITIONER'S/S' ANNEXURES

- ANNEXURE I** TRUE COPY OF THE JUDGMENT DATED 22.07.2021 OF THE HON'BLE ADDITIONAL SESSIONS COURT-I, ERNAKULAM IN S.C. NO. 921 OF 2018
- ANNEXURE II** TRUE COPY OF THE JUDGMENT DATED 30.10.2023 IN CRL.A. NO. 655 OF 2021 OF THIS HON'BLE COURT
- ANNEXURE III** A TRUE COPY OF THE JUDGMENT DATED 13.04.2023 IN W.P. (C) NO. 7661 OF 2023
- ANNEXURE IV** TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 30.10.2023 IN W.A. NO. 1030 OF 2023
- ANNEXURE V** TRUE COPY OF THE DETENTION ORDER NO.30/Bo1/CAP/2021 DATED 26.07.2021 ISSUED BY THE 3RD RESPONDENT HEREIN
- ANNEXURE VI** TRUE COPY OF THE JUDGMENT DATED 20.12.2023 IN CON. CASE (CIVIL) NO. 2659 OF 2023
- ANNEXURE VII** TRUE COPY OF THE ORDER DATED 06.12.2023 OF THE HON'BLE ADDITIONAL SESSIONS COURT-VIII, ERNAKULAM IN CRL.M.P. NO. 5390 OF 2023 IN S.C. NO. 921 OF 2018
- ANNEXURE VIII** TRUE COPY OF THE REPRESENTATION DATED 18.12.2023 MADE BY THE PETITIONER TO THE 4TH RESPONDENT HEREIN