

**IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH  
Friday, the 3RD day of June 2022 / 13th Jyaishta, 1944**

**CRL.M.APPL.NO.13/2022 IN CRL.MC NO. 803 OF 2022**

**CRIME NO.297 OF 2017 NEDUMBASSERY PLICE STATION, ERNAKULAM**

**S.C. NO.118/2018 ADDITIONAL SPECIAL SESSIONS COURT(SPE/CBI CASES)III,ERNAKULAM**

**PETITIONERS/RESPONDENTS:**

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
2. THE INVESTIGATING OFFICER IN CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION HAVING OFFICE AT POLICE CLUB, ALUVA, PIN - 683101

**RESPONDENTS//PETITIONER/ACCUSED NO.8/ADDL. 3RD RESPONDENT:**

1. P. GOPALAKRISHNAN ALIAS DILEEP, AGED 54 YEARS, PADMASAROVARAM, KOTTARAKADAVIL ROAD, ALUVA, ERNAKULAM DISTRICT, PIN - 683101
2. XXXXXXXXXXX

Application praying that in the circumstances stated therein the High Court be pleased to extend the time fixed in the order dated 19-04-2022 in CrL.MA 6/2022 in CrL.MC 803/2022, to complete the further investigation now undertaken by the investigating agency, by another period of three more months.

This Application coming on for orders upon perusing the application and 19/04/2022 in CrL.M.A.6/2022 and upon hearing the arguments Public Prosecutor for the petitioner (R1 and R2 in CrL. M.C ) and of M/s. B.RAMAN PILLAI (SR.), THOMAS T.VARGHESE, PHILIP T.VARGHESE, SUJESH MENON V.B., V.T.LITHA, K.R.MONISHA, SHRUTHI SARA JACOB and NITYA R., Advocates for R1 (Petitioner in CrL.M.C.) and of Smt. T.B.MINI, Advocate for R2(Addl.R3 in CrL.MC), the court passed the following:

**DR.KAUSER EDAPPAGATH, J.**

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in

Crl.M.C. No.803/2022

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Dated this, the 3<sup>rd</sup> day of June, 2022

**O R D E R**

This is an application filed to extend the time fixed as per the order dated 19/4/2022 in Crl.M.A.No.6/2022 in Crl.M.C No.803/2022 to complete the further investigation by another three months.

2. The respondent No.1/accused No.8 has filed a detailed objection.

3. I have heard the learned Director General of Prosecution Sri.T.A.Shaji, the learned Senior Counsel appearing for the respondent No.1/accused No.8 Sri.B.Raman Pillai and the learned counsel for the respondent No.2/victim Smt.T.B.Mini.

4. The direction in the order dated 8/3/2022 while disposing of Crl.M.C.No.803/2022 was to complete the further investigation and to file the final report as expeditiously as possible, at any rate, not later than 15/4/2022. The time so fixed was sought to be extended by the prosecution by filing Crl.M.A No. 6/2022 and this court by order dated 19/4/2022 extended the time till 30/5/2022 and specifically directed the investigating agency to complete the

further investigation and file the final report positively before the said date. Now, the present application has been filed for an extension of time by yet another three months for completing the further investigation.

5. The learned Director General of Prosecution submitted that the investigating agency tried its best to complete the further investigation within the extended time granted by this court. However, during further investigation, much new electronic evidence and other documents have come up which requires further scrutiny and collection of related documents and questioning of witnesses. Moreover, voluminous electronic data retrieved from the electronic gadgets belonging to the accused and his associates requires further detailed analysis which is time-consuming. In these circumstances, the investigation team could not complete the further investigation within the time limit granted by this court. If the time is not extended, the investigation will have to be stopped halfway, submitted the learned Director General of Prosecution.

6. The learned Senior Counsel appearing for respondent No.1, Sri.B.Raman Pillai vehemently opposed the application. The

learned Senior Counsel submitted that the application filed by the prosecution for extension of time by yet another three months for completing the further investigation is manifestly attended with *malafides* and an abuse of process of law. The counsel further submitted that the conduct of the investigating agency as well as prosecution is actuated not only by malice against respondent No.1, but even against the justice dispensation system. There are no grounds for granting further enlargement of time and even the false claims made in the application do not make out any reason for granting a further extension of time, submitted the Senior Counsel. The learned Counsel for the victim supported the submission made by the learned Director General of Prosecution.

7. The reasons for the extension of time are stated in paragraphs 9(i) to 9(xi) of the application. A reading of those paragraphs would show that the investigation agency is seeking for enlargement of time mainly for the following five reasons. (i) Analysis of digital evidence by the investigating team is not over (ii) Reports from FSL have not been received (iii) Two more mobile phones have to be recovered (iv) Some more witnesses have to be questioned, and (v) Access of the memory card, while it was in

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the custody of the court, is to be investigated. The learned Senior Counsel for respondent No.1 submitted that none of the five reasons shown by the petitioners for seeking an extension of time is genuine or relevant and the investigating agency is only fabricating reasons for avoiding the filing of the final report. In so far as the claim of the investigating agency to investigate the alleged access of the memory card while it was in the custody of the court is concerned, the learned Senior Counsel submitted that the said claim is made unnecessarily and only to scandalise the court. According to the Counsel, the investigating agency cannot raise a claim that they have to investigate the access of memory card while in court custody and the same is beyond the scope of investigation by the investigating team in Crime No.297/2017 of Nedumbasserry Police Station. The counsel further submitted that the only claim of Sri.Balachandra Kumar is that visuals of the sexual assault were seen by respondent No.1 and others on 15/11/2017 and if that be so, the issue of the memory card being accessed on 13/12/2018 while in the custody of the court is totally irrelevant and the purported investigation about that aspect in the course of further investigation is totally

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unnecessary and has been raised only for the purpose of delaying the submission of the final report. I am not making any observation on this point since the matter is now *sub judice* in a writ petition pending before another Bench. Insofar as the remaining four points are concerned also, the learned counsel for the respondent No.1 submitted that those have been projected only for the purpose of delaying the submission of the charge sheet. The Counsel further submitted that the investigating team is groping in the dark and no worthwhile investigation is being done but what is being attempted is a roving enquiry into the personal, private, and confidential data contained in the mobile phones of the respondent No.1 and granting further time for such an investigation is impermissible. The Counsel also submitted that the investigating team is deliberately delaying the FSL report and at any rate, the non-receipt of FSL report is no reason for not filing the final report. So far as the need for recovery of two mobile phones is concerned, the learned Counsel submitted that the contents of those mobile phones are with the investigating agency going by the statements made by them and hence the recovery of those mobile phones is of little significance.

8. The petitioners have stated the summary of the further investigation conducted so far in paragraph 7 of the application. It shows that so far statements of 112 witnesses have been recorded, searches were conducted at seven premises, 27 mahazars were prepared and 187 documents were seized. The voice samples of six persons were collected and sent for FSL examination. It is seen from the application that a letter allegedly written by the accused No.1 to respondent No.1 has been seized during the further investigation and it was sent to FSL for comparison of handwriting and the result is awaited. It is also seen that voice samples of accused No.1 and one Jinson were collected and the report is awaited. Similarly, the voice samples of respondent No.1, his brother and his brother-in-law were collected and sent for FSL examination, and the results are awaited. It is also stated that the digital evidence of mobile phones used by respondent No.1 was made available from the investigating officer in Crime No.6/CB/EKM/2022 and a soft copy of FSL report regarding the above said mobile phones contain more than 2,00,000 pages and includes 11161 videos, 11238 audio clips, more than 2,00,000 images, 1597 documents etc.

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and the analysis of the data retrieved from the two out of six mobile phones which are voluminous is yet to be completed. It is further stated that results of the examination of six-voice samples, one handwriting and the certified copies of the digital evidence in Crime No.6/CB/EKM/2022 are to be received from the FSL, Thiruvananthapuram and some more witnesses are remaining to be examined. It is also stated that certified copies of the call data reports of 11 mobile phone numbers are yet to be received from the respective service providers. Considering the fact that the analysis of voluminous evidence collected during further investigation is yet to be completed, reports from FSL regarding the examination of voice samples and handwriting are yet to be received, some more witnesses have to be questioned, and also taking into account the entire facts and circumstances of the case, I am of the view that the prayer for extension of time has to be favourably considered to meet the ends of justice. However, further investigation cannot be allowed to continue indefinitely. It is to be noted that the initial investigation in the case was completed and the final report was filed within a period of two months and the further investigation was completed within

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a period of six months. It was considering the entire facts and circumstances of the case and considering the remaining part of the further investigation to be carried out, as revealed from the submission of the learned Director General of Prosecution and the report submitted in a sealed cover, the time was initially fixed by this court, which was later on extended. In this second further investigation, more than five months' time is already over. The time fixed by the Apex Court by its order dated 16<sup>th</sup> August, 2021 to complete the trial has already expired. Considering all these aspects, I am of the view that it will be just and fair that the investigating agency is given time till 15/7/2022 to complete the further investigation.

For the reasons stated above, the time to complete the further investigation is extended till 15/7/2022. The investigating agency shall complete the further investigation and file final report positively before the said date. The application stands allowed as above.

Sd/-

**DR.KAUSER EDAPPAGATH, JUDGE**

Rp