

(2020) 12 KL CK 0309

In the High Court Of Kerala

Case No : Criminal Miscellaneous Case No. 5300 Of 2020 (B)

Madukoluchibuzor Samson

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 18-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 420, 465, 468, 471
Code Of Criminal Procedure, 1973 — Section 167(2)

Citation : (2020) 12 KL CK 0309

Hon'ble Judges : P.V. Kunhikrishnan, J

Bench : Single Bench

Advocate : Adithya Rajeev, Girish Kumar M S, P. Vijayakumar, Ajith Murali

Final Decision : Disposed Of

Judgement

1. The petitioners are accused Nos.7 and 8 in Crime No.608 of 2018 of Guruvayur Temple Police Station. The above case is registered against the petitioners and others alleging offences punishable under Sections 420, 465, 468, 471 r/w Section 34 IPC. Petitioners are Nigerian Citizens.

2. The petitioners were arrested in connection with the above case on 1.2.2019. They are in custody from that date onwards. The petitioners and 2

others filed an application before the learned Magistrate for getting statutory bail under Section 167(2) Cr.P.C. That petition was allowed by the

learned Magistrate as per order dated 4.4.2019 in MP No.3386 of 2019 in Crime No.608 of 2018.

3. This Crl.M.C is filed by the petitioners with a prayer that the condition in Annexure-II order to the effect that the petitioners shall surrender their

passport may be lifted. According to the petitioners, their passport is irrecoverably lost.

4. When this bail application came up for consideration, this Court directed the petitioners to implead Union of India and the Foreign Regional

Registration Officer. Accordingly, a petition was filed and that petition was allowed and they were impleaded as additional respondent nos.2 and 3.

The Assistant Solicitor General appeared for respondent Nos. 2 and 3.

5. Heard the counsel for the petitioners, the Assistant Solicitor General and the Public Prosecutor.

6. The counsel for the petitioner submitted that there is no passport to the petitioners. They lost their passport. The petitioners are in custody for about

650 days. Since there is a condition in Annexure-II order that the petitioners should produce the passport, the learned Magistrate is not releasing the

petitioners. According to the petitioners, their passport is irrecoverably lost.

7. The Assistant Solicitor General filed a statement. In the statement it is stated that the condition of surrendering passport is necessary so as to

ensure that the accused does not flee from the country. It is also stated that the petitioners may not be allowed to have free movement across India

and hence accused may be kept in detention centres till the completion of the trial. The ASGI produced a copy of the Model Detention Centre Manual

issued by the Ministry of Home Affairs as Annexure-R2(d). Moreover, as per Annexure-R2(c), this Court directed the State Government to create

detention centres. That is an order passed on 5.10.2015. The relevant portion of the order of this Court in Annexure-R2(c) is extracted hereunder:

“The Additional Chief Secretary, Home and Vigilance Department, has reported that any detention centres/holding centres have not yet been set

up for keeping Bangladeshi Nationals, who are found staying in the State without valid travel documents. It is a pity that the Government has not so

far cared to establish such detention centres/holding centres in the State.

2. The learned counsel for the petitioner has pointed out that in all other States in India, except the State of Kerala, such detention centers/holding

centres have already been established. The Government shall look into the matter and do the needful at the earliest.”

8. On a perusal of Annexure-R2(a) it is clear that even now no detention centres are created by the State Government. I again say that this is a sorry

state of affairs. This Court directed in 2015 to do the needful. Now we are in 2020. Even now nothing is done by the State Government. I direct the

Additional Chief Secretary, Home Affairs, State of Kerala to do the needful in this regard, within 6 months and file a compliance report before the Registrar General of this Court.

9. It is a fact that the petitioners are continuing in jail indefinitely. In the statement given by the ASGI, it is stated that if a portion of the Viyyur jail is converted as a temporary detention centre, the Union of India has no objection in shifting the petitioners to the temporary detention centre which will follow all the guidelines in Ext R2(d). The counsel for the petitioner submitted that as far as the other accused is concerned, the learned Magistrate already obtained a report from FRRO in this regard. Therefore, in the facts and circumstances of the case, I think the condition to produce the passport in Annexure-2 order can be lifted and the learned Magistrate can direct the petitioners to be released once the temporary detention centre is created in accordance with Annexure-R2(d) guidelines. I also make it clear that if any residence address is given by the petitioners and the same can be treated as a detention centre, the learned Magistrate can take such a course also if necessary. But before taking such a course, the learned Magistrate will get definite instructions from FRRO and from the State Government.

Therefore, this Crl.M.C is disposed of with following directions.

1. Condition in Annexure-2 order to the effect that the petitioners shall surrender their passport is lifted.
2. The petitioners shall be released by the learned Magistrate based on Annexure-2 order, only after a place is earmarked as detention centre as provided in Annexure-R2(d) or any other place which can be treated as temporary detention centre, with the consent of the State Government and Union of India, which can also be a residential house if any provided by the petitioners.

Registry will forward a copy of this order to the Additional Chief Secretary, Home Affairs, State of Kerala for complying the directions in Paragraph 8 of this order.