
(2014) 02 KL CK 0107
In the High Court Of Kerala
Case No : Crl. M.C. No. 937 of 2014

Mohammed Shakeel and Naishad Ali	APPELLANT
Vs	
The State of Kerala	RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)(ii), 482
Penal Code, 1860 (IPC) — Section 34, 379, 392

Citation : (2014) 02 KL CK 0107

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : K.M. Firoz and Smt. M. Shajna, Advocate for the Appellant; Sareena George, Public Prosecutor for R1 and R2, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—This is an application filed by accused Nos. 1 & 2 in C.C. No. 1203/2013 (Crime No. 79/2013 of Chevayur Police Station) on the files of the Judicial First Class Magistrate Court-I, Kozhikode, to modify the conditions imposed by that court while granting bail u/s 482 of the Code of Criminal Procedure, 1973.

It is alleged in the petition that petitioners are accused in Crime No. 79/2013 of Chevayur Police Station alleging offence u/s 392 r/w 34 of Indian Penal Code. After investigation final report also filed alleging that the same offence. But after verification of the materials collected the learned magistrate took cognizance of the case as C.C. No. 1203/2013 for offence u/s 379 of Indian Penal Code alone. Thereafter the petitioners moved for bail by filing C.M.P. No. 6036/2013 and the petition was allowed by the learned magistrate by Annexure AI order with the following conditions:

1. The sureties shall be local sureties.
2. They shall report before the Investigating Officer between 9 A.M. and 11 A.M.

on all Mondays and Thursdays until further orders.

3. They shall make themselves available for interrogation as and when required by the Investigating Officer at any time till the filing of the final report.
4. They shall not directly or indirectly make an inducement, threat or promise to any person who is acquainted with the facts of the case so as to dissuade him or her from disclosing any information to the Court or to the Investigating Officer.
5. He shall not establish any contact with any of the witnesses or attempt to tamper with the evidence for the prosecution.
6. They shall not leave the limit of Chevayur Police Station until further orders.
7. The sureties shall produce their original title deeds for perusal.
8. They shall not involve in any offence while on bail and
9. They shall notify to this court their place of residence situated within the limit of Chevayur Police Station before executing the bail bond.

Dissatisfied with condition Nos. 1, 2, 6, 7 & 9 the petitioners have come before this court to modify those conditions by filing this application.

2. The counsel for the petitioners submitted that the petitioners are from Uttar Pradesh and it is difficult for them to obtain local sureties. So such a condition is beyond their compliance. The learned counsel also submitted that condition No. 2 is not required because final report has already been filed and condition No. 3 also not necessary as final report filed. The magistrate further directed that they shall not leave Chevayur Police Station limit until further orders and directed them to furnish the place of residence within Chevayur police station limit to that court before executing the bail bond is also not possible because they are not residing in Chevayur police station limit and by virtue of these conditions they are not able to go to their native place also as the trial of the case will take time. The counsel also submitted that condition No. 7 directing the sureties to produce the original title deeds for perusal is also unwarranted. The counsel also submitted that he is prepared to produce the a surety who will be a Government servant either Central or State and also prepared to deposit some reasonable amount as cash security for this purpose.

3. The application is opposed by the learned Public Prosecutor on the ground that the parties are permanent residents of outside the State and if the conditions are lifted their presence could not be procured for trial.

4. I have considered the rival contentions of both parties.

5. It is an admitted fact that the petitioners were arrested by the Chevayur police in connection with crime No. 79/2013 of Chevayur police station and after investigation final report has already been filed. It is also seen from the order itself that originally the offence alleged was Section 392 r/w 34 of Indian Penal Code. But the court has taken cognizance of the case only for the offence u/s

379 of Indian Penal Code. Further the bail granted was a statutory bail u/s 167(2) (ii) of Code of Criminal Procedure.

6. As per condition Nos. 2 & 3, the petitioners directed to report before the investigating officer between 9 a.m. and 11 a.m. on all Mondays and Thursdays until further orders and they shall make themselves available for interrogation as and when required by the investigating officer at any time till the filing of the final report. Since final report has already been filed and the court has taken cognizance of the case these two conditions became infructuous. So those conditions can be lifted completely.

7. As regards condition No. 1 is concerned regarding local sureties, it may be difficult for the petitioners to get local sureties as they are not the residents of Kerala. So insisting a local surety in such cases will cause hardship to them and that will amount to really denial of benefit of bail granted to them. But at the same time the sureties must be produced to the satisfaction of the court. So considering the circumstances, I feel that directing the petitioners to produce sureties either one of them being a Government servant either State or Central with their salary certificates duly issued by the competent authority and also one surety from their place with the identification card and land revenue receipt along with title deed of the property (if it is not in English but in the local language of that place with a translation copy of the same duly attested by a competent officer regarding the correctness of the translation or by a Notary Public of that place) for perusal and after perusing the same the magistrate is directed to return the original title deed to the surety. It is further ordered that the sureties shall deposit Rs. 10,000/- each as cash security apart from producing the documents mentioned above on the date of execution of the bail bond.

8. Regarding the 6th condition is concerned, I feel that the same can be modified by directing that they shall not leave Kozhikode District without getting prior permission from the concerned court, during pendency of the trial and that will be sufficient.

9. As regards 9th condition is concerned the petitioners shall furnish the place of residence in Kozhikode district to the court before or at the time of execution of the bail bond in Kozhikode district which can be verified by the investigating officer if necessary.

The application is disposed of with the following conditions:

1. Condition Nos. 2 & 3 are lifted completely.

2. The petitioners shall execute a bond for Rs. 1 lakh with two solvent sureties for the like sum each to the satisfaction of the magistrate one of whom being a Government servant either State or Central or any place with their salary certificate duly issued by the competent authority and one surety from their place with identification card to prove his identity and land revenue receipt along

with the title deed of the property (if it is not in English but in the local language of that place with a translation copy of the same duly attested by a competent officer regarding the correctness of the translation or by a Notary Public of that place for perusal and after perusing the same the magistrate is directed to return the original title deed to the sureties.

3. The sureties shall also deposit Rs. 10,000/- each as cash security apart from producing the documents mentioned above on the date of the execution of the bail bond.

4. They shall not leave Kozhikode district without getting prior permission from the concerned court during the pendency of the trial. They shall furnish their place of residence in Kozhikode district to the court before or at the time of execution of the bail bond which can be verified by the investigating officer if necessary.