

(2015) 07 KL CK 0079

In the High Court Of Kerala

Case No : Criminal M.C. No. 4014 of 2015

Okowe Chigozie Collins

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)(ii)
Foreigners Act, 1946 — Section 14(B), 3(1), 3(2)(g), 3(2), 3(2)(g)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21(b),
27(a), 29
Passports Act, 1967 — Section 12(1a)(b)
Penal Code, 1860 (IPC) — Section 419, 420, 468, 471

Citation : (2015) 4 KHC 450 : (2016) 1 RCR(Criminal) 579

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : P.B. Ajoy and T.A. Kader Kunju, for the Appellant; N. Suresh, Public Prosecutor, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Alexander Thomas, J—The limited prayer made by the petitioner in this CrI.M.C. is for an order from this Court to delete the second limb of condition No. 1 of the bail order granted to the petitioner as per Anx.A rendered on 29.5.2015. The petitioner claimed to be a Nigerian citizen and he was arrested by the Circle Inspector of Police, Ernakulam Central Police Station in Crime No. 159/2015 of Kadavanthra Police Station, for a case involving offence under the NDPS Act and, on verification of his travel documents with the Foreigners Regional Registration Office (FRRO), it was disclosed to the investigation agency that the petitioner used fake passport and fake visa and arrived in India. Consequently, the present Crime No. 355/2015 of Kadavanthra Police Station was registered against him for offences under Secs. 468, 471 and 420 of the I.P.C. On verification of the petitioner's passport, it was disclosed to the investigation agency that on 23.10.2014, the accused had entered into Mumbai CSI Airport, whereas the

physical verification of the records at the aforesaid airport, revealed that the petitioner had not actually entered into that airport on the aforesaid day. When the petitioner moved the bail application as per CrI.M.P. No. 2400(A)/2015 in Crime No. 355/2015 of Kadavanthra Police Station before the Chief Judicial Magistrate's Court, Ernakulam, the investigation agency submitted that if he is released on bail, then there is every chance to abscond from the jurisdiction of that court and bail may be refused. After the expiry of the prescribed statutory period, as the investigation was not completed, the petitioner had made the present application as CrI.M.P. No. 2400/2015 before the Chief Judicial Magistrate's Court praying for grant of statutory bail, as he was in custody for more than 70 days from 19.3.2015 onwards. Though the prosecution opposed the said bail prayer, the court below held that the petitioner is entitled to the benefit of the statutory bail as per Anx.A order dated 29.5.2015. It is stated therein that the offences registered against the petitioner in Crime No. 355/2015 are those under Sec. 419, 468, 471 of the I.P.C., Sec.12(1a)(b) of the Passport Act and Sec.14(B) of the Foreigners Act. Accordingly, the Chief Judicial Magistrate's Court, Ernakulam, as per Anx.A granted statutory bail to the petitioner under Sec.167(2)(ii) of the Code of Criminal Procedure, subject to the following conditions:

"1. On executing bond for Rs. 50,000/- with two solvent sureties and for the like amount each. Sureties shall be the relatives of accused.

2. Accused shall report to the investigating officer on every Thursday between 10 am and 12 noon till the filing of final report.

3. Accused shall not leave the jurisdiction of this Court until further orders."

2. The petitioner's only grievance is that the condition imposed in the second limb of condition No. 1 to the extent that the sureties shall be relatives of the accused, is impossible to be complied with as far as the petitioner is concerned and that this is irrational and unreasonable and will not serve any purpose at all to secure and assure the presence of the accused for the impugned criminal proceedings and that the same may be deleted. Otherwise it is pointed out by the petitioner that, he will have to languish in the jail in spite of the grant of the benefit of the statutory bail.

3. Heard Sri. P.B. Ajoy, learned counsel for the petitioner, learned Public Prosecutor appearing for the 1st respondent State of Kerala and Sri. N. Nagaresh, learned Assistant Solicitor General appearing for additional respondents 2 & 3 (Government of India authorities).

4. One of the prime arguments made by Sri. P.B. Ajoy, learned counsel for the petitioner is that the accused was initially made an accused in another crime, Crime No. 159/2015 of Kadavanthra Police Station, for offences under Secs.21(b), 27(a) and 29 of the NDPS Act. In that crime also, the petitioner had applied for grant of statutory bail, due to the expiry of the statutorily prescribed period since the commencement of his judicial custody. In the order dated

8.5.2015 in CrI.M.C. No. 993/2015 filed before the Sessions Court concerned, Ernakulam, for grant of such statutory bail in the NDPS case, the said Sessions Court, Ernakulam, as per order dated 8.5.2015, had also found that the petitioner is entitled to the benefit of statutory bail and had imposed five conditions, which read as follows:

"1. The petitioner shall execute a bond for Rs. 1,00,000/- with two solvent sureties each of the like sum.

2. The petitioner shall not leave the State of Kerala without permission of the court.

3. The petitioner shall not tamper with the evidence or influence the witnesses in any manner.

4. The petitioner shall appear before the Circle Inspector of Police, Ernakulam Central police station on every Tuesday and Friday in between 10.00 am. and 12.00 non until further orders.

5. The petitioner shall not commit any offence while on bail."

5. It is pointed out that condition similar to the present impugned second limb of condition No. 1 insisting that sureties shall be close relatives of the accused, has not been insisted in the aforesaid bail order dated 8.5.2015 in the NDPS crime.

6. More crucially it is contended that even as per the case projected by the prosecution, the petitioner belongs to an African country and that no worthwhile purpose is going to be sub-served even if a close relative of the accused is standing as a surety for the petitioner for grant of bail. Such close relative can only be from an African country concerned and there may not be any mechanism to assure and assess about the properties of such African Nationals and even if it is assured, mechanism for proper enforcement is not in any way enhanced merely because they happened to be close relatives and moreover such close relatives hailing from African country concerned will have to go back to their respective African countries concerned. So the argument is that no rational objective or purpose can be effectuated or assured for better enforcement mechanism for the presence of the accused merely by insisting that the sureties should be close relatives of the foreigner accused person. On the other hand, it is pointed out that there will be lot of confusions and complications even in assessing about the property worth of such foreign nationals, etc. The learned Public Prosecutor submitted that there is every likelihood of the petitioner absconding and that therefore this Court may not delete the impugned condition.

7. Per contra, the learned counsel for the petitioner in answer to this contention submitted that there are sufficient safeguards in the Foreigners Act, 1946, which empowers the State authorities as well the Central Government authorities to take necessary steps while dealing with the foreigner like the one at hand. The learned counsel for the petitioner pointed out that the provisions contained in Sec.3(1), 3(2) of the Foreigners Act, 1946, more particularly, provisions

contained in Sec.3(2)(g) thereof, which empower the Central Government that such foreigner could even be arrested and detained or confined, if necessary jurisdictional facts in that regard are satisfied. Sri. N. Nagaresh, the learned Assistant Solicitor General appearing for the additional respondents 2 and 3 Government of India authorities, submitted that as per the well accepted practice, it is for the State Government concerned to approach the competent authority of the Central Government for effectuating appropriate action in that regard, including for an order under Sec.3(2)(g) of the Foreigners Act.

8. After hearing all parties concerned, this Court is the considered opinion that the retention of the second limb of condition No. 1 of Anx.A bail order is not reasonable and necessary. The Apex Court and this Court have held in umpteen number of decisions reported and otherwise that competent criminal courts, while granting bail, shall impose only those conditions which are necessary, just and fair and that unreasonable and unfair conditions shall not be imposed, as otherwise it is not possible for the accused to comply with such condition, which will lead to denial of bail even though the bail court has ordered for grant of bail. Accordingly, it ordered in the interest of justice that the impugned second limb of condition No. 1 of Anx.A order to the extent that sureties shall be relatives of the accused shall stand deleted. All the other conditions imposed in paragraph 4 of Anx.A order shall stand remain unaltered. It is further ordered that the petitioner shall not tamper with the evidence or influence the witness in any manner and he shall not commit any offence while on bail. Needless to say, the grant of bail as per Anx.A as modified above shall not in any way trammel or curtail or restrict the powers of the competent authorities under the Foreigners Act, 1946, more particularly those under Sec.3(1), 3(2) and 3(2)(g) of the Foreigners Act, 1946. It is for the Central Government authorities and the State Government authorities to act in tandem and to decide further modalities that are to be taken in the case of the petitioner. It is made clear that they shall proceed in such matters in accordance with law.

With these observations and directions, the Crl.M.C. stands finally disposed of.