
(2009) 11 KL CK 0140
In the High Court Of Kerala
Case No : B.A. No. 6799 of 2009

Vijayan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Passports (Amendment) Act, 1993 — Section 12(1A)
Passports Act, 1967 — Section 12(1)
Penal Code, 1860 (IPC) — Section 419, 468, 471

Citation : (2009) 11 KL CK 0140

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Jaison Joseph, Jimmy Joseph, P.S. Bastin and Blesson Antony, for the Appellant; Tekchand, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—This is an application for bail u/s 439 of the Code of Criminal Procedure. The Petitioner is the accused in Crime No. 1675 of 2009 of Nedumbassery Police Station, Ernakulam District.

2. The offences alleged against the Petitioner are under Sections 419, 468 and 471 of the Indian Penal Code and Section 12(1)(b) and (d) of the Passports Act, 1967.

3. The prosecution case, in brief, is the following: On 8-10-2009, the Petitioner (Vijayan) left for Dubai from Nedumbassery Airport. On landing in Dubai, the airport authority of Dubai International Airport entertained a suspicion about the genuineness of the Indian Passport held by the Petitioner. On scrutiny, the passport was found to be not genuine. The Petitioner was deported to India. Nedumbassery police registered the crime and arrested the Petitioner on his arrival to Nedumbassery Airport. The allegation is that the Petitioner, who is a holder of an Indian Passport, got the passport of one Mohammed Kunhi, removed

the photograph of Mohammed Kunhi, affixed the photograph of the Petitioner in that place and thus, forged a passport to suit his convenience. The prosecution alleges that the Petitioner is involved in some activities in Mumbai and he used to frequently go abroad and come back to India. The prosecution suspects that the Petitioner is involved in smuggling activities.

4. The learned Counsel for the Petitioner submitted that the Petitioner was arrested on 10-10-2009 and he continues to be in judicial custody since then. There is no reason why he should be detained further.

5. The investigation is not over. The activities of the Petitioner are to be verified by the Investigating Officer. Whether any other person is also involved in the offence and whether there is any racket involved in the commission of the offence and similar offences, are all matters to be considered by the Investigating Officer.

6. It is noticed that the number of cases relating to the offence under the Passports Act is on the increase in the State of Kerala. There are cases where persons who are deported to India and who are not permitted to go to the same country for certain period, procure a second passport by illegal means. There are cases where the age and other details in the passport are erroneously entered so as to secure job abroad. There are cases where persons get more than one passport to facilitate their nefarious activities. Persons who hold more than one passport are often found involved in serious offences affecting the sovereignty and integrity as well as the security and economy of the country. How to check these offences which affect the economic stability and security of the nation should be of great concern. Terrorist activities are also on the increase in the State. Offences under the Passport Act are to be viewed in this background.

7. The punishment provided u/s 12(1) of the Passports Act was up to six months before the Amendment Act, 35 of 1993. The punishment of imprisonment which extended only up to six months was enhanced to two years by the amendment introduced by Act 35 of 1993. Even now, the offence u/s 12(1) of the Passports Act is bailable. Section 12(1A) was inserted by Act 35 of 1993 which provides for a punishment of imprisonment which may extend to 5 years. But Section 12(1A) applies only in the case of persons who are not citizens of India.

8. Very many offences under the Passports Act go unnoticed. The present case is an example for the same. The authorities of Nedumbassery Airport, Kochi were not able to find out that the Petitioner was holding a forged passport. Only the airport authority in Dubai could detect that the Petitioner was holding a forged passport. If the offence u/s 12(1) of the Passports Act alone is alleged against a person, the offence being bailable, the Investigating Officer would not get an opportunity to have custodial interrogation of the accused. The offenders would go free on bail and indulge in criminal activities. The question whether an amendment of Section 12(1) of the Passports Act is required in the changed scenario in the country is a matter to be considered by the law makers. It would

be ideal if the punishment provided for the offence u/s 12(1) is enhanced suitably so as to make the offence a non bailable one.

For the aforesaid reasons, I am of the view that if bail is granted to the Petitioner at this stage, it would adversely affect the proper investigation of the case. Therefore, I am not inclined to grant bail to the Petitioner. The Bail Application is accordingly dismissed.

The Registry will send a copy of this order to the Secretary, Ministry of Law and Justice, New Delhi and to the Secretary, Department of Home Affairs, New Delhi.