

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 17TH DAY OF SEPTEMBER 2012/26TH BHADRA 1934

Bail Appl..No. 6713 of 2012 ()

CRIME NO.175/2012 OF KUNNATHUNADU POLICE STATION, KOLENCHERRY,
ERNAKULAM DISTRICT.

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APPELLANT/ACCUSED:

SREEKANTH.K.M., AGED 33 YEARS
S/O.MILTON, SREELAKSHMY NILAYAM, MANAKKAPPADY
KARUMALLOOR KARA, KARUMALLOOR VILLAGE, PARAVUR TALUK
ERNAKULAM.

BY ADVS.SRI.PRASUN.S
SRI.PAUL MATHEW (PERUMPILLIL)

RESPONDENT(S)/COMPLAINANT-STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING THE STATION HOUSE OFFICER
KUNNATHUNADU POLICE STATION.

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
17-09-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P. BHAVADASAN,J.

B.A.No. 6713 of 2012

Dated this the 17th day of September, 2012

ORDER

Since a non bailable warrant has been issued against the petitioner, going by the decision reported in **Lavesh V. State (NCT of Delhi) 2012(3)KLT 876** this Court is precluded from granting anticipatory bail normally. But the case on hand presents a different picture altogether.

2. The final report was made available in which it is mentioned as the accused who had not been arrested. It is significant to note that there is no statement in the final report that accused had absconded could not be apprehended.

3. Under such state of affairs normally the Court on taking the charge on file and cognizance of the offence should have issued a summons and should have seen whether accused would appear or not. Of course the

court has power also to simultaneously issue a warrant. But that is only under exceptional circumstances born out by materials on record.

4. In the case on hand it is contended that the petitioner on the date of his appearance filed a petition seeking exemption pointing on that he could not arrange sureties and that warrant issued against him may be recalled. This Court is given to understand inspite of that non bailable warrant was repeated.

This Court is unable to understand the procedures followed by the learned Magistrate. There is no allegations seen against the petitioner that he is absconding or evading process of law. He had filed exemption petition on the date on which the appearance was due. He also attempted to show as to he was not served with the summons issued to him and he was unaware of the proceedings. The Court should have applied its mind to those aspects and should have seen whether warrant already issued was justified

without doing so issuing a fresh non bailable warrant should not have been issued. In the result petition is allowed as follows:

- i) The petitioners shall surrender before the court concerned on 25.09.2012 on an application filed for withdrawing the non bailable warrant, the learned Magistrate may pass orders and if in case the petitioner moves an application for bail, the same shall be allowed on the petitioner executing a bond for a sum of Rs.25,000/- (rupees twenty five thousand) with two solvent sureties for the like sum each to the satisfaction of that court.
- ii) The learned Magistrate shall ensure the identity of the sureties and also the veracity of the tax receipts before granting bail.

P. BHAVADASAN,JUDGE.

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P.A. To Judge.

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