

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

CRL.MC NO. 1243 OF 2021

AGAINST CC NO.429/2016 OF JUDICIAL MAGISTRATE OF FIRST
CLASS-I , KOTTAYAM

PETITIONER/ACCUSED :

SHINU ALPHO RAJAN

AGED 31 YEARS

D/O RAJAN JACOB, CHETHIPUZHA HOUSE,
PERUMPANACHY P.O., MADAPPALLY VILLAGE,
CHANGANACHERRY, KOTTAYAM DISTRICT.

THE PETITIONER IS REPRESENTED BY HER MOTHER
AND POWER OF ATTORNEY HOLDER, BEENA RAJAN,
AGED 55 YEARS, W/O RAJAN, CHETHIPUZHA HOUSE,
PERUMPANACHY P.O., MADAPPALLY VILLAGE,
CHANGANACHERRY, KOTTAYAM DISTRICT.

BY ADVS.

M.R.ARUNKUMAR

SRI.A.FRANCIS

SRI.P.T.BINDURAJ

SRI.P.SHAMMI NAVAS

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI-682031.

2 ADDL.R2.

THOMAS JOSEY MALAYIL

3F, B-BLOCK, ARTECH, DEEPAM APARTMENTS,
ANAYARA, THIRUVANANTHAPURAM-695029

IS IMPEADED AS PER ORDER DATED 24.5.2023 IN CRL.MA.NO.2
OF 2021.

BY ADVS.
K.R.SUNIL
AISWARYA VENUGOPAL
KRISHNA SURESH
EASHWARY.V

SRI VIPIN NARAYAN, SR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.05.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner herein is the accused in CC No.429 of 2016 on the file of the Judicial First Class Magistrate Court I, Kottayam. In the aforesaid case, she is facing prosecution for having committed offenses punishable under Sections 323 and 294(b) of the IPC. The prosecution allegation is that she slapped her husband on his cheek and thereby committed the offense.

2. According to the petitioner, she took bail and thereafter filed an application for exemption which was allowed. She left for her place of employment in the UAE and has been working there ever since. In her absence, the trial was completed and the case was posted for judgment on 5.11.2020. When she failed to appear on that day, the learned Magistrate ordered personal appearance and posted the case to 9.11.2020. The petitioner applied for time on 9.11.2020, and the case was posted to 11.11.2020. As the petitioner was not in a position to leave her place of employment, she failed to appear and the learned Magistrate proceeded to cancel the bail and ordered notice to sureties. It was followed with a Non Bailable Warrant. Being aggrieved, this petition is filed seeking issuance of directions to the learned Magistrate to consider her application for recalling

the warrant and grant of bail.

3. I have heard the learned counsel appearing for the petitioner, the learned counsel appearing for the party respondent, and the learned Public Prosecutor.

4. The learned counsel appearing for the petitioner submitted that the petitioner shall appear before the learned Magistrate as and when directed and requests that necessary directions be issued to the learned Magistrate to consider the application for bail to be filed on the same day itself.

5. The learned counsel appearing for the respondents opposed the submissions.

6. Having regard to the facts and circumstances and the submissions made across the bar, this petition is disposed of by ordering as under:

a) The petitioner shall surrender before the jurisdictional court within two weeks from today.

b) If applications for recalling the warrant and for grant of bail are preferred before the court with advance

notice to the concerned prosecutor, the learned Magistrate shall consider the same and pass appropriate orders in accordance with law, ideally on the date of surrender itself.

(c) In order to enable the petitioner to appear before the court below, coercive proceedings pending against the petitioner shall be kept in abeyance for a period of two weeks.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

NS

APPENDIX OF CRL.MC 1243/2021

PETITIONER ANNEXURES :

ANNEXURE A1	CERTIFIED COPY OF THE READABLE COPY OF ORDER SHEET IN C.C.NO.429/2016 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, KOTTAYAM.
ANNEXURE A2	CERTIFIED COPY OF POWER OF ATTORNEY EXECUTED BY THE PETITIONER IN THE NAME OF HIS MOTHER BEENA RAJAN.
ANNEXURE A3	COPY OF THE JUDGMENT OF THE FAMILY COURT KOTTAYAM AT ETTUMANOOR IN O.P.NO.760 OF 2016 DATED 30.4.2018.
ANNEXURE A4	COPY OF THE JUDGMENT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, ALAPPUZHA DATED 7.12.2019 IN M.C.NO.40 OF 2016.
ANNEXURE A5	COPY OF THE FINAL REPORT IN CRIME NO.688 OF 2016 OF KOTTAYAM EAST POLICE, KOTTAYAM.