

O.P.(Crl).No.651 of 2024

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“C.R.”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 24TH DAY OF SEPTEMBER 2024 / 2ND ASWINA, 1946

OP(CRL.) NO. 651 OF 2024

CRIME NO.187/CB/KTM/2018 OF CBCID, KOTTAYAM,

**AGAINST THE ORDER/JUDGMENT DATED 23.08.2024 IN CRMP
NO.506/2024 IN CR NO.187/CB/ 2018 OF SPECIAL COURT (NDPS
ACT CASES), THODUPUZHA**

PETITIONER/S:

**SHANID @ SHANI
AGED 32 YEARS
S/O.HAMZA, PANDARATHOTTATHIL HOUSE, MATTOL
CENTRAL, KANNUR TALUK, KANNUR DISTRICT, PIN -
670302**

BY ADV R.KRISHNAKUMAR (CHERTHALA)

RESPONDENT/S:

**1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF**

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KERALA, PIN - 682031

- 2 DEPUTY SUPERINTENDENT OF POLICE-III,
CRIME BRANCH
OFFICE OF THE CRIME BRANCH, COLLECTORATE,
KOTTAYAM, PIN - 686002**

- 3 REGIONAL PASSPORT OFFICER, KOZHIKODE
REGIONAL PASSPORT OFFICE, ERANHIPALAM POST,
KOZHIKODE, PIN - 673006**

**BY ADV KRISHNA T C
SMT NIMA JACOB, PUBLIC PROSECUTOR
SMT MINI GOPINATH, DSGI**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
24.09.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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K.BABU, J.

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Dated this the 24th day of September, 2024

JUDGMENT

The prayers in the Original Petition are as follows:-

- “a) Call for the records leading upto Ext.P4 and set aside the above said order by issuing an order or direction.
- b) Direct the 3rd respondent to decide the grant of issuance of passport to the petitioner de hors Ext.P4 order in view of the decision of this Hon’ble Court in Thadevoose Vs Regional Passport Officer 2021[5] 625 [Para No.22] that, ‘if no final report has been filed and no cognizance has not been taken therein and hence there is no criminal proceeding pending’ and therefore to pass

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orders on the application of the petitioner for passport within the timelimit fixed by this Hon'ble Court.

c) issue such other appropriate orders or directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

2. The petitioner is accused No.2 in Crime No.187/CB/KTM/2018 of Crime Branch Kottayam (originally registered as Crime No. 610/2018 of Erumely Police Station). He is alleged to have committed the offences punishable under Sections 370, 420 r/w Section 34 of the Indian Penal Code and Section 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The allegation against the petitioner and the other accused are as follows:-

In furtherance of their common intention to export narcotic drugs and psychotropic substances to Qatar, the petitioner and the other accused promised a job in Qatar

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to Sri. Kevin Mathew, a 23-year-old boy, son of the de facto complainant and, arranged a visiting visa for him. Kevin, carrying a bag containing narcotic drugs handed over by the petitioner and the other accused, without knowing the contents in it, landed in Qatar. The Qatar Police found 4 kgs of ganja in the bag in possession of Sri. Kevin and arrested him. Based on the statement given by the mother of Kevin, Erumely Police registered the present crime. The petitioner and the other accused are involved in human trafficking.

4. The petitioner filed an application under Section 22(a) of the Indian Passports Act, 1967, seeking permission to leave India before the Special Court where the FIR is pending. The learned Special Judge rejected the application, as per Ext.P3 order, taking into account the seriousness of the allegations levelled against the petitioner. The learned Special Judge held that as the

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investigation is only in the preliminary stage, granting permission to the petitioner to leave India is tantamount to modifying the conditions under which he was granted bail.

5. The petitioner then approached this Court challenging Ext.P3 order by filing Crl.M.C.No.8471 of 2022. As per order dated 02.03.2023, the Crl.M.C. was dismissed, with liberty to the petitioner to move the application afresh.

6. The petitioner again filed an application seeking permission to leave India before the Special Court. The Special Court, as per order dated 23.08.2024 (Ext.P4), rejected the application on the ground that the circumstances that existed at the time of dismissal of the earlier application had not changed.

7. I have heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned

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Deputy Solicitor General of India appearing for the passport authority.

8. The learned counsel for the petitioner submits that the petitioner has obtained a job in Abu Dhabi, and if he is not given permission to travel abroad, he may lose his employment. The learned Public Prosecutor opposed the application on the ground that in view of the allegations levelled against the petitioner if he is permitted to leave India, it will not be in the public interest. The learned DSGI also opposed the application on the ground that in view of the nature of allegations levelled against the petitioner, permitting the petitioner to go to a foreign country may affect the friendly relation between India and the other country.

9. The learned Public Prosecutor submitted that the investigation in the case has been transferred to the Crime Branch and is progressing. The learned Public

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Prosecutor submitted that granting permission to the petitioner to leave India may adversely affect the investigation.

10. The petitioner is alleged to have committed offences of human trafficking and illegal export of narcotic drugs to a foreign country.

11. As per Section 6 of the Passports Act, 1967, the passport authority shall refuse to issue travel documents to a citizen on different grounds.

12. Section 6 of the Act reads thus:-

“6 : Refusal of passports, travel documents, etc.-(1)

Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

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(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his

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application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a Court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such Court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

13. As per Clause(f) of sub-section [2] of Section 6 of the Act, the passport authority shall refuse to issue a travel document for visiting any foreign country on the ground that the proceeding in respect of an offence

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alleged to have been committed by the applicant concerned is pending before a Criminal Court in India. As per the Notification dated 25.08.1993 issued by the Ministry of External Affairs, the Government of India has exempted the citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the Court concerned permitting them to depart from India, from the operation of the provisions of Clause(f) of sub-section [2] of Section 6 of the Act.

14. If the Court concerned permits a person to leave India, the passport authority may issue a travel document to him even if he is accused of an offence.

15. The ground weighed the Court below to reject the application is found in paragraph 9 of Ext.P3 order, which is extracted below:-

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“9. The important question is, is it necessary, just or proper to issue no objection certificate in the circumstances of the case. Indisputably the crime alleged against the petitioner is grave one. As per the allegation the petitioner was involved in international transportation of narcotic drugs of big quantity by making use of innocent youth. Export, import, transshipment and transportation of narcotic drugs is the gravest kind of crime and the threat of the day. The punishment provided u/s. 23 of the NDPS Act indicates the gravity of the crime. It is most important that, as per the allegation the petitioner came in the Air Port at Karippoor and entrusted the contraband to Kevin Mathew in order to hand over it to another person in Qatar Airport. That shows that the petitioner is having connections with international drug traffic. In case no objection certificate is issued the petitioner may obtain passport and go abroad and indulge in similar crimes of international connections. It may not be helpful for public interest. Apart from that this is a case where investigation is spread in the abroad also. So the petitioner may be able to destroy or manipulate evidence. For the aforesaid reasons it is not just or proper to issue no objection certificate to the petitioner.”

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16. The learned Public Prosecutor raised the contention that the issue of a passport to the petitioner to travel abroad will not be in the public interest. The learned DSGI submitted that in view of the nature of allegations levelled against the petitioner, the presence of the petitioner outside India is prejudicial to India's friendly relationship with the foreign country concerned.

17. The right to travel abroad is a valuable one and an integral part of the right to personal liberty. Any law interfering with the personal liberty of a person must satisfy the triple test:

- (1) It must prescribe a procedure
- (2) the procedure must withstand the test of one or more of the fundamental rights conferred under Art.19, which may be applicable in a given situation.
- (3) It must also be liable to be tested with references to Art.14.



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18. As the test propounded by Art.14 pervades Art.21, the law and procedure authorizing interference with personal liberty must also be right, just and fair, and not arbitrary, fanciful or oppressive. Our Constitution does not guarantee the right to any particular procedure for the deprivation of life or personal liberty besides those contained in Art.22. The Legislature is left free to lay down any procedure within the ambit of the legislative power subject, of course, to the limitation contained in Arts. 14, 19, 20 and 22. [*Vide: Commentary on the Constitution of India by Durga Das Basu - 8th Edition 2008 page No.3152*]

19. The genuine apprehension that the presence of a citizen of India in a foreign country is not in the public interest and is likely to prejudice the friendly relations of India with any foreign country is a ground to refuse

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passport and related travel documents to him. Such a restriction is just and reasonable and not arbitrary or oppressive.

20. I have anxiously considered the submissions made at the bar, the materials placed by both sides and the allegations levelled against the petitioner on the touchstone of the principles discussed above to see whether the impugned order is vitiated. The order stands the test of constitutionality. I am of the considered view that the orders impugned require no interference. Exts.P3 and P4 orders stand confirmed.

The Original Petition stands dismissed.

Sd/-
K.BABU,
JUDGE

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APPENDIX OF OP(CRL.) 651/2024

PETITIONER EXHIBITS

- Exhibit P1** **A TRUE COPY OF THE FIR IN CRIME
NO.610/2018 OF ERUMELI POLICE STATION
DATED 15-06-2018**
- Exhibit P2** **A TRUE COPY OF THE ORDER DATED 02-03-
2023 IN CRL.M.C NO. 8471/2022 OF THIS
HON'BLE COURT**
- Exhibit P3** **A TRUE COPY OF THE ORDER DATED 13-06-
2023 IN CRL.M.P NO. 335/2023 IN
CR.NO.187/CB/KTM/18 OF CRIME BRANCH,
KOTTAYAM [OLD CRIME NO. 610/2018 OF
ERUMELY POLICE STATION ON THE FILE OF
THE SPECIAL JUDGE FOR NDPS ACT,
THODUPUZHA**
- Exhibit P4** **A TRUE COPY OF THE ORDER DATED 23-08-
2024 IN CRL.M.P NO. 506/2024 IN
CR.NO.187/CB/KTM/18 OF CRIME BRANCH,
KOTTAYAM [OLD CRIME NO. 610/2018 OF
ERUMELY POLICE STATION ON THE FILE OF
THE SPECIAL JUDGE FOR NDPS ACT,
THODUPUZHA**
- Exhibit P5** **A TRUE COPY OF THE LETTER OF
APPOINTMENT AND EMPLOYMENT CONTRACT
ISSUED BY THE GRAPIX TECHNOLOGIES**