

IN THE COURT OF SESSIONS, KASARAGOD DIVISION

Present : Sri.Biju.T, Additional Sessions Judge-II, Kasaragod
(Sessions Judge In charge, Kasaragod)
Saturday, the 04th day of May, 2024

CRIMINAL M.P No.1417 OF 2024 in S.C. No.160 OF 2023
(Crime No. 1067/2022 of Chandra Police Station)

Between:-

Mohammed Rahinas P.K,
aged 25 years,
S/o. Abdul Rahoof,
R/at Parakkadavath House
Vittakulam, Poroppad,
Thekke Thrikaripur P.O.,
Hosdurg Taluk, Kasaragod District.

} Petitioner/Accused No.2

And

State, S.H.O. Chandra Police Station.
Represented by
Public Prosecutor, Kasaragod.

} Respondent/Complainant

Petition filed U/s.205 and 317 of Cr.PC for a permission to represent counsel on behalf of the second accused.

This petition presented on : 16.03.2024

This petition coming on 29th day of April, 2024 for final hearing before me in the presence of Sri. Nikhil Narayan, Advocate for the petitioner; of District Public Prosecutor for the Respondent (State); and having stood over to this day for consideration; the Court passed the following:

ORDER

This petition is filed U/s.317 of the Cr.P.C by the petitioner/second accused in the case registered as Crime No.1067/2022 of the Chandra Police

Station for a permission to represent counsel on behalf of the second accused.

2. The petitioner is alleged to have committed the offences punishable U/ss. 302, 201, 212 r/w 34 of IPC and Section 3(2)(v) of SC/ST (PoA) Act.

3. **Gist of the petition, in brief, is as follows:-** The accused was an employee at Malaysia and he intends to go Malaysia to join his employment. It is not possible for him to present before the Court on all days. If the petitioner is not exempted from his personal appearance, he will put into irreparable loss and hardships. Hence this petition.

4. The learned Public Prosecutor for the State opposed the petition and report filed by the investigating officer opposing the prayer.

5. The mother of the deceased present before the court. Heard the mother of the deceased.

6. Heard both sides.

7. Petitioner is already on bail and now he is facing trial. By executing bond he undertook to appear before this court.

8. The mother of the deceased opposed the petition. It is true that the crime is of the year 2022. It is also true that the offences alleged against the

petitioner are grave. Where proceedings in respect of the offence alleged to have been committed by the petitioner is pending before this court subject to such conditions necessary fixing the period, the permission can be granted to the petitioner to go abroad. No doubt gravity of the offences alleged against the petitioner is a material circumstance which also be taken into consideration when prayer is made for permission from the court. Moreover, the petitioner shall not lose his opportunity to go abroad and seek employment for eking out his livelihood.

9. The counsel for the petitioner would contend that the petitioner would answer under section 313 of Cr.P.C. through his counsel. Such a course is open while dealing with a summons case or a warrant case and not to a sessions case. So, this court has no discretionary power to have the plea of not guilty and 313 questioning of the accused recorded through his counsel who is specifically instructed for this purpose. If permanent exemption from appearing before the court is granted, the progress of the trial is likely to be hampered on account of his absence. So, permanent exemption cannot be granted. The presence of the petitioner must be before the court to frame charge and to conduct examination U/s 313 Cr.P.C.

10. In 2022 (2) KLT 207, Moosa Pattupura V. State of Kerala 14 the Hon'ble High Court of Kerala held that the principle for granting exemption from appearance of the accused can be applied to appropriate sessions case as well.

In the result, petition is allowed in part as follows:

The petitioner is temporarily exempted from appearing before the court personally till 6 months from today. The advocate permitted to represent the accused should appear before the court on behalf of the accused. If there is any failure on the part of the advocate it shall be open for this court to direct the appearance of the accused.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 4th day of May, 2024).

**Sd/-
SESSIONS JUDGE (I/C)**

//True Copy//

Typed by : Reshmi.P
Compared by : Jayanthi.K

Fair/Copy of Order in
Crl.M.P.No.1417/2024
in SC.160/2023.

Dated:04.05.2024