

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I, PERUMBAVOOR

Present:Sri.Anish Babu M.B, Judicial Magistrate of First Class-I

Tuesday the 31st day of January, 2023/17th Magham, 1944

CMP No. 328/23 IN CC No.249/15

Petitioner/Accused No.3: Muhammed Anwar, Aged 36/23, S/o Yousaf Moulavi, Manalikkudi House, Pezhakkappilly Kara, Mulavoor Village, Moovattupuzha Taluk, Ernakulam District,

(By Adv.K.V Mathappan)

Respondent/Complainant: State represented by the Sub Inspector of Police, Perumbavoor P.S (Cr.No.2340/13)

(By Geetha K.K, A.P.P Gr.II)

ORDER

This petition is filed by the petitioner/accused No.3 for renewal of Passport bearing No.W0083141 of the petitioner.

2. The case of the petitioner is that he is the accused No.3 in Perumbavoor Police Station Crime No. 2340/2013 alleging commission of offences punishable under Sections 9, 10, 11 of Prohibition of child Marriage Act. The petitioner is holding a passport and it will expire on 02.05.2023. The petitioner is now in need of permission from this Court for renewing his passport in order to perform "Umra Karma".

3. Heard the learned counsel for the petitioner and the Assistant Public Prosecutor. The Learned Assistant Public Prosecutor filed a report raising an objection since there is every chance to cause hindrance in the trial, and chance to go abroad, if passport is renewed as sought in this petition. It will also give wrong message to the society. Hence she prays to dismiss the petition.

4. It is well settled that an accused is presumed innocent unless and until he is found guilty. It can be seen that the courts have consistently held that the pendency of a criminal proceeding is not a bar for obtaining a passport or for travelling abroad. The Government of India has issued a Notification No. G.S.R.570 (E) dtd. 25.08.1993, under S.22 of the Passport Act. **The Hon'ble High Court of Kerala has also considered the said notification in its decision in Asok Kumar v. State of Kerala, reported as 2009 (2) KLT 712** and granted permission to the accused to travel abroad. **The Hon'ble High Court of Kerala in Mohamad Shafi v. Regional Passport Officer, reported as 2017 (2) KHC 484** had held that criminal court is vested with ample power to issue directions for providing passport for a specific period and the magistrate can fix the period for travelling abroad or even issue directions to issue the passport for a specified period in accordance with the facts and circumstances of each and every case.

5. In the case on hand, the petitioner is the accused No.3 in Perumbavoor Police Station Crime No. 2340/2013 alleging commission of offences punishable under Sections 9, 10, 11 of Prohibition of child Marriage Act. According to the petitioner, he is totally innocent in the matter. Recently, **the Hon'ble High Court of Kerala in Akhilesh v. State of Kerala and Ors., reported as 2021 (2) KHC 752**, has held that the court where the case is presently pending has to decide whether the applicant is entitled to get a passport as well as the period for which he is entitled to get a passport and the court has to keep in mind the fact that pendency of a criminal case shall not stand in the way or cause hindrance to decide the future of the applicant. The petitioner herein is now in

need of permission from this Court for renewing his passport in order to perform “Umra Karma”. After all, the present petition is only to renew the existing passport and the petitioner is not seeking any permission to go abroad. Considering the facts narrated, the petition is allowed. Intimate the Regional Passport Officer, Ernakulam that pendency of this case is not a bar to renew the passport bearing No. W0083141 of the petitioner/accused No.3 for a period of 2 years. It is made clear that the petitioner/accused No.3 shall not leave the country without obtaining express permission from the court.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and revised by me and pronounced in open court on the 31nd day of January, 2023.)

Sd/-

Judicial First Class Magistrate-I,

Perumbavoor