

IN THE COURT OF SPECIAL ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, THRISSUR

Present: Smt. Alpha Mamai K., Additional Chief Judicial Magistrate

Dated, this the 13th day of May, 2025.

CMP : 2932/2025 in CC No. 233/2023
(Cr.No. 164/2011 of Thalapuzha Police Station)

Petitioner /Accused : Abdul Sathar, 45/25, S/o. Jabbar, Puthen Purayil
No.28. House, Kuzhinilam, Mananthavadi P.O., Wayanad.

(By Adv. Sri. Pramod K.).

Respondent/
Complainant : State represented by Detective Inspector, CBCID,
EOW III, Kozhikode Sub Unit.

(Cr.No: 164/2011 of Thalapuzha Police Station).

(By Smt. Dhannu Gireesh, Assistant Public
Prosecutor, Court of Special Additional Chief Judicial
Magistrate, Thrissur).

Petition : U/s. 22(a) of the Passports Act, 1967.

ORDER

This is a petition filed by the accused no.28, in CC 233/2023, on the file of this court, seeking permission, to apply for a new passport.

2. Petition averments are, as follows:-

Petitioner is the accused no.28, in the above case. The offences alleged against the accused, are under sections 420, 120B r/w 34 IPC and sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The case against the accused is totally false and all the allegations are baseless and the above case is filed with ulterior motive to harass the petitioner. The petitioner is unemployed and he is

searching for a job at abroad, for his livelihood. Petitioner is the hope of his family and he wants to apply for a new passport, for his job purpose. Hence, seeks to pass an order exempting the petitioner from section 22(a) of the Passports Act and permit the petitioner to apply for a new passport and dispense the presence of the petitioner in the above case, for two years.

3. Report was filed by the Detective Inspectorh, Wayanad, through the learned Assistant Public Prosecutor, objecting the petition, stating that, the presence of the accused is highly necessary for the prosecution of the above case and granting an exemption from section 6(2)(f) of the Passports Act, will adversely effect the prosecution and it will help the accused, in evading from appearance before the court. Hence, seeks to dismiss the petition, filed by the accused/petitioner.

4. Heard both sides.

5. CC 233/2023 is a case based on the final report filed by the Detective Inspector, CBCID, EOW III, Kozhikode Sub Unit, alleging offences punishable under sections 420, 120B r/w 34 IPC and sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Though the crime is registered in the year 2011, even now the case is at the very initial stages and even charge is not framed and several discharge petitions filed by some other accused in this case, pending for consideration. Hence, definitely it will taken more time to complete the trial proceedings. Petitioner is facing trial, since 2017. According to the petitioner, for job purpose, he wants to go abroad and for that purpose, he wants to apply for a new passport through the Regional Passport office, Kozhikode.

6. The **Honourable High Court of Kerala** in **Thadevoos Sebastian v. Regional Passport Office and Another**, reported in **2021(5) KHC 625**, has held as

follows:

“18. On an appreciation of the aforesaid decisions, it can be seen that the courts have been constantly holding that the pendency of a criminal proceeding is not a bar for obtaining a passport or for travelling abroad. However, the only requirement in such cases is that the court where the criminal proceeding is pending, must grant permission for the period of such travel or the period for which the passport can be issued . Based upon such permission, the passport issuing authority can issue the requisite document enabling travel.

19. We must remind ourselves that, we are still governed by the pristine principle that an accused is presumed innocent unless and until he is found guilty. The fact that false prosecutions can mar the career and future of a person is also a factor that may well not be ignored while considering the grant of permission. This Court cannot also lose sight of the fact that criminal trials in our Country take ages to complete, notwithstanding the efforts at reducing delay. Adding to all these, with the Covid-19 pandemic having halted the continuity of trials in many trial courts, further delay is a forgone conclusion and to say the least. Reality being so, the grant of permission by the Magistrate enabling an accused to travel abroad will be of great significance, especially since it will be a process of balancing the fundamental right of a citizen to travel abroad and the need to ensure the presence of the accused during trial. Many a time, the consideration results in subjective satisfaction of the Magistrate rather than the required objective satisfaction. To avoid subjectivity, it is necessary to lay down the parameters that can govern the grant of permission for future guidance.”

7. The Honourable High Court of Kerala, in the above said decision, laid down certain parameters, that shall govern the grant of permission by criminal courts, in the matter of issuance of passport to those involved in criminal proceedings pending in courts as follows:

“20. The parameters that shall govern the grant of permission by the criminal courts in the matter of issuance of passports to those involved in criminal proceedings pending in courts shall be as follows:

- (i) The stage of the criminal proceeding and the duration of time within which the trial may take place;*
- (ii) The criminal antecedents and past conduct of the accused;*
- (iii) The nature and gravity of the crime; offences under Statutes dealing with acts of terrorism and acts of smuggling should require a different consideration.*
- (iv) In heinous crimes, if the court decides to grant permission, the period for which permission is granted can be limited;*
- (v) Chances of the accused fleeing or evading the trial in the case;*
- (vi) Mode in which the presence of the accused can be ensured during trial, including stipulating conditions like providing the address/ change of address in the country of residence abroad, either with the Indian Consulate at the country of residence abroad or with the Court where the trial is pending.*
- (vii) Since in cases where time is not fixed by the Magistrate while granting permission, the Passport authorities are issuing passports only for one year, the period for which the accused can be permitted to travel can also be fixed by the Magistrate, while granting permission.”*

8. As stated above, even now the case is at the very initial stages and it will take more further time to complete the trial proceedings. Considering the said fact and also considering that the petitioner intends to go abroad for his job purpose and hence for his livelihood, in the interest of justice, petitioner is granted permission to apply for a new passport and go abroad, for a period of two years, as sought in the petition. But, considering the objection from the prosecution side, and also to ensure

the presence of the accused/petitioner, as and when required, and also to see that, the trial proceedings are not obstructed, due to the absence of the accused/petitioner, permission is granted, subject to conditions.

9. Hence, petition allowed as follows:-

- i. Petitioner (accused no.28 in CC 233/2023 on the file of this Court) is permitted to depart from India, for a period of two years from the date of this order, as provided under clause (f) of sub section 2 of section 6 of The Passport Act read with Notification issued by the Govt. of India GSR 570(E) dated 25-8-1993.
- ii. Accused shall execute a bond for Rs. 50,000/-, with two solvent sureties each for the likesum.
- iii. Before going abroad, petitioner shall file an affidavit, stating that, he will not dispute his identity during trial and that he will be represented by his counsel on all hearing dates and that he will not claim his right u/s. 273 Cr. PC and that his absence during trial will not be taken as a ground either in appeal or in revision and that framing charge and examination u/s.313 Cr. PC, can be conducted through his counsel.
- iv. Petitioner shall also file an affidavit, stating that, service of notice or summons, on his close relative at native place, shall be deemed to be service on him and he shall furnish the full correct address of such close relative.

(Dictated to the Confidential Assistant, typed directly by her to the computer, corrected and pronounced by me in open court on this, the 13th day of May, 2025).

Additional Chief Judicial Magistrate,
Thrissur.