



OP (CRL.) NO. 324 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 10TH DAY OF JUNE 2025 / 20TH JYAISHTA, 1947

OP (CRL.) NO. 324 OF 2025

AGAINST THE ORDER DATED 15.02.2025 IN CMP 34/2025 IN VC NO.7
OF 2024 OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE),
THALASSERY

PETITIONER/PETITIONER:

RAJU KATTAKAYAM
AGED 60 YEARS
S/O SEBASTIAN, KATTAKAYAM HOUSE, DERKAS, PARAPPA,
MALOTH VILLAGE, MANDALAM KANDAM DESOM, KASARGOD
DISTRICT, PIN - 671533

BY ADVS.
SHRI.AJIT G ANJARLEKAR
SRI.G.P.SHINOD
SRI.GOVIND PADMANAABHAN
SHRI.ATUL MATHEWS
SMT.GAYATHRI S.B.



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RESPONDENT/STATE & COMPLAINANT:

- 1 STATE OF KERALA
 REPRESENTED BY THE SECRETARY, HOME AND VIGILANCE
 DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
 695001
- 2 THE DEPUTY SUPERINTENDENT OF POLICE
 VIGILANCE AND ANTI-CORRUPTION BUREAU, KASARAGOD,
 KASARAGOD DISTRICT, PIN - 671121
- 3 THE REGIONAL PASSPORT OFFICER
 REGIONAL PASSPORT OFFICE, KOZHIKODE, KERALA, PIN -
 673571

BY ADV O.M. SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA

OTHER PRESENT:

ADV.RAJESH A, SPL PP VACB, SRPP REKHA.S FOR VACB

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 10.06.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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A. BADHARUDEEN, J

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O.P. (Crl) No. 324 of 2025

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Dated 10th day of June 2025

JUDGMENT

This Original Petition (Criminal) has been filed under Article 227 of the Constitution of India, and the prayers are as follows:-

1. To call for the records reading to Ext.P2 and quash the same, and direct the 3rd respondent to renew the passport bearing No. M 474 8717 issued on 29.12.2014 from the passport office, Kozhikode, without insisting for a “no objection” from the court



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of the Enquiry Commissioner and Special Judge,
Thalassery;

2. Dispense with the filing of the english translation of
the vernacular documents, as the petitioner
undertakes to produce the same as and when directed
by this Hon'ble Court; and
3. Grant such other and further reliefs that this Hon'ble
Court may deem fit and proper in the facts and
circumstances of the case.

2. Heard the learned counsel for the petitioner and the learned
Public Prosecutor representing the State of Kerala, in detail.



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3. It is submitted by the learned counsel for the petitioner that, as per FIR in Crime No. 07/2024/SCK, a case was registered against the petitioner alleging commission of offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, as amended 2018. However, so far, the investigation has not been completed. According to the learned counsel for the petitioner, before filing the final report, no criminal proceedings within the meaning of Section 6(f) of the Passport Act, 1967, said to be pending before a criminal court in India. In such circumstances, even though it was not necessary for the petitioner, the accused in the crime, to apply to the special court for renewal of his passport, he filed an application on misunderstanding.



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According to the learned counsel for the petitioner, the said application was considered by the learned Special Judge and allowed the same as per Ext.P2 order, and imposed conditions as under:-

1. The passport authority shall renew the passport of the petitioner for a period of 5 years, if the application is in order, and in the event of its renewal, the passport authority shall intimate the renewal of the passport of the petitioner to this Court.
2. The petitioner shall surrender his passport before this court within 15 days of the receipt of the same.



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3. The petitioner shall not leave India without the previous permission of this court.
4. The petitioner shall deposit an amount of Rs.20,000/- as security for his prompt appearance as and when directed by this court.
5. The petitioner shall also file an affidavit to the effect that he shall not leave India without the previous permission of this Court on the basis of the passport renewed and in case of the default in his part to comply with any of the above conditions, the security amount of Rs.20,000/- and bail bond executed by him can be forfeited without notice.



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4. The learned counsel for the petitioner would submit that, Ext.P2 order is liable to be set aside, as the petitioner is entitled to apply for a passport even without the permission of the court, since no criminal proceedings within the meaning of Section 6(f) of the Passport Act, 1967 pending against him. He has placed the decision of this court reported in **2021 (5) KHC 625 Thadevoose Sebastian v. Regional Passport Office and Another** in support of his argument.

5. As far as the legal position pointed out by the learned counsel for the petitioner is concerned, the learned public prosecutor also did not raise dispute. The learned public prosecutor submitted



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that, in this matter, the investigation has been progressing, but final report not filed so far.

6. It is true that, as per section 6(f) of the passport Act 1967, which deals with the power of the passport authority to refuse passport, travel documents etc, the passport authority should refuse to issue passport, or travel documents for visiting the foreign country under clause (c) of sub-section (2) of Section 5 on any one or more of the grounds stated in Section 6(2)(a)(2)(i). Section 6 (2)(f) of the Passport Act provides that pendency of proceedings in respect of an offence alleged to have been committed by the applicant pending before a criminal court in India is a valid reason to refuse passport or travel documents.



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7. In paragraph No.17 of **Thadevoose Sebastian's** case (supra), this court considered the meaning of the term “criminal proceedings pending” as under:-

A recap of the various decisions of this Court may be necessary at this stage of the deliberations. In *Muhammed v. Union of India and Others* (2018 (4) KHC 945:2018 (2) KLD 621), this Court had held that a criminal proceeding is pending only when cognizance is taken and in the absence of a final report filed in Court, a criminal case cannot be treated as pending. It was also held that mere registration of a crime does not invoke either S.6 or S.10 of the Act, and the police verification report must mention



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the stage of the crime. Similarly, in the decision in *Jayan V. M. @Jayasoorya v. Union of India and Others* (2018 KHC 823: 2018 (4) KLT 1077: ILR 2019 (1) Ker. 56) this Court had observed while considering a case of impounding of passport that mere property disputes or family disputes masquerading as crimes cannot deprive a person of his or her fundamental right to travel and the passport officer has to exercise his discretion in evaluating the gravity of the crime and then decide whether the pending crime must result in variation, impounding or revocation of the passport or the travel document. In the decision in *Mohamad Shafi v. Regional Passport Officer* (2017 (2)



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KHC 484: 2017 (1) KLD 631 2017 (2) KLT 309: ILR 2017 (2) Ker. 589) this Court has held that Criminal Court is vested with ample powers 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. In *Muhammed v. State of Kerala and Another* (2012 (4) KHC 553: 2012 (4) KLT 655: ILR 2012 (4) Ker. 835: 2013 (1) KLJ 185) it was held that the gravity of the offence alleged cannot be the sole basis to decline permission to go abroad for a short period and the



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Magistrate can allow the application to travel abroad by imposing adequate safeguards for securing the presence of accused for trial. In *Akhilesh v. State of Kerala and Others* (2021 (2) KHC 752: 2021 (1) KLD 677: 2021 KHC OnLine 195: 2021 (2) KLT 553 ILR 2021 (2) Ker. 645: 2021 (2) KLJ 606) it was 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 hold the passport and the Court has also 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 an applicant.



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8. Thereafter, in paragraph No. 22 of **Thadevoose Sebastian's** case (supra), this Court found that if the final report has not been filed and no cognizance has been taken by the court, then no criminal proceedings pending before the court, and the passport authority is free to decide on the grant of a passport without permission from the court.

9. In the instant case, even though FIR was registered, the investigation so far not completed. If so, following the ratio in **Thadevoose Sebastian's** case and the decisions referred in paragraph No.17 of the same, it could not be held that any criminal proceedings pending against the petitioner within the meaning of section 6(2)(f)



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of the Passport Act. Therefore, for renewal of the passport of the petitioner, permission of the court is not necessary.

10. As per the impugned order, the special judge allowed the passport authority to renew the passport of the petitioner for a period of five years as per law. Since the same is an order in favour of the petitioner, there is no reason to interfere with the said order. But it is noticed that the said order has been passed by imposing conditions 2 to 5 of onerous nature as extracted above. Therefore, the same would require interference in view of the legal position discussed hereinabove.

11. Therefore, this original petition (Criminal) is allowed in part. Condition Nos. 2 to 5 imposed in Ext.P2 order stand quashed



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with liberty to the petitioner to apply for renewal of passport as per law, deeming that no criminal proceedings as of now pending against him before a court in India.

It is made clear that if the Investigating Officer requires the presence of the petitioner as part of the investigation, he can issue notice to him or approach the special court as per law for the said purpose, and secure his presence for the purpose of investigation.

Sd/-

A. BADHARUDEEN, JUDGE

RMV



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APPENDIX OF OP (CRL.) 324/2025

PETITIONER EXHIBITS

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| Exhibit P1 | A TRUE COPY OF F.I.R NO: 07/2024/SCK REGISTERED BY VACB SPECIAL CELL, KOZHIKODE DATED 14.08.2024 |
| Exhibit P2 | A TRUE COPY OF THE ORDER DATED 15.02.2025 OF THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THALASSERY IN CMP NO: 34 OF 2025 IN VC NO: 07/2024/SCK. |