IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY,THE 21ST DAY OF DECEMBER 2020/30TH AGRAHAYANA,1942

WP(C).No.13875 OF 2020(H)

PETITIONER:

RAKHUL KRISHNAN,AGED 41 YEARS,
S/O. LATE T.N RADHAKRISHNA PILLAI,
ASHWATHY, CHERUMUKHA, AYIRANIKKUDI P.O.,
NOORANAD, MAVELIKKARA,
ALAPPUZHA DISTRICT, PIN 690 558.

BY ADVS.
SRI.T.K.VIPINDAS
SRI.K.V.SREE VINAYAKAN

RESPONDENTS:

1 **UNION OF INDIA,REPRESENTED BY SECRETARY,**
MINISTRY OF EXTERNAL AFFAIRS,
NEW DELHI, PIN 110 001.

2 **THE SECRETARY,MINISTRY OF EXTERNAL**
AFFAIRS, NEW DELHI 110 001.

3 **THE SECRETARY,CPV & OVERSEAS INDIAN AFFAIRS**
DIVISION, MINISTRY OF EXTERNAL AFFAIRS,
NEW DELHI 110 001.

4 **THE ASSISTANT DIRECTOR**
(NATIONAL CENTRAL BUREAU (INTERPOL)
NEW DELHI), CENTRAL BUREAU OF INVESTIGATION,
PLOT NO. 5-B, 6TH FLOOR, A-WING,
CGO COMPLEX, LODHI ROAD, NEW DELHI 110 003.

5 **THE STATE POLICE CHIEF,**
KERALA POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM, PIN 695 010.

6 **INSPECTOR GENERAL OF POLICE,**
CB/CID HURT AND HOMICIDE WING,
POLICE HEAD QUARTERS COMPLEX,
THIRUVANANTHAPURAM, PIN 695 010.

**7 THE SUPERINTENDENT OF POLICE,
KOLLAM CITY, PIN 691 001.**

**8 SREEJITH VIJAYAN,S/O. VIJAYAN PILLAI,
VIJAYASREE, 89 MUKUNDAPURAM P.O., CHAVARA,
KOLLAM DISTRICT, PIN 691 585.**

**ADDL. 9 SECRETARY,MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI, PIN-110 001.**

ADDL.R9 IS IMPLEADED AS PER ORDER DATED 26-11-2020 IN IA 3/2020

**R1-R3 BY ADV. MR.P.VIJAYAKUMAR, ASGI
R4 BY SRI.SASTHAMANGALAM AJITH KUMAR
R5-R7 BY GOVERNMENT PLEADER SMT.RASHMI K.M.
R8 BY ADV. SRI.MANSOOR.B.H.
R8 BY MS. VIDYA KURIAKOSE**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

[CR]

J U D G M E N T

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Dated this the 21st day of December, 2020

The petitioner has approached this Court seeking to direct respondents 1 to 4 to initiate action to implement Ext.P2 International Arrest Warrant as per the provisions of the Extradition Act,1962 and to handover the 8th respondent to the Government of Dubai as per the provisions of the Extradition Act, 1962 and other enabling legal provisions.

2. The petitioner states that he was an NRI businessman doing business in Dubai, UAE. The 8th respondent befriended the petitioner claiming that he is a business partner of a well known Hotel in Dubai. The 8th respondent borrowed an amount of Six Million UAE Dirhams from the petitioner as a financial help to his businesses. The 8th respondent promised to repay the amount before

10.06.2015. But, before the said stipulated date, the 8th respondent absconded to India without repaying the amount.

3. The petitioner would submit that the 8th respondent had borrowed money from several banks and other individuals in UAE and had absconded from UAE to India without discharging his debts. There are 8 criminal cases registered against the 8th respondent by Dubai Police. The petitioner presented the personal guarantee cheque of 6 Million AED issued by the 8th respondent on 01.04.2016. The cheque was returned unpaid for insufficiency of funds. The petitioner filed a criminal case against the 8th respondent in Naif Police Station in Dubai. By Ext.P1, the Dubai Court convicted the 8th respondent for imprisonment for a term of two years. The petitioner initiated the procedure in Dubai criminal court to issue Interpol Red Warrant against the 8th respondent. An International Arrest Warrant was issued against the 8th respondent on 16.05.2018 as evidenced by Ext.P2.

4. The petitioner would contend that the Government of Dubai has transmitted the International Arrest Warrant to

the 1st respondent for execution. Government of India has executed Extradition Treaty with the Government of United Arab Emirates. As per Article 2 of the said Treaty, a person sentenced by the court of the requesting State with the imprisonment for six months in respect of an offence, is liable to be extradited. The petitioner contended that the 8th respondent is a fugitive criminal and respondents 1 to 7 are liable to arrest and surrender the 8th respondent to the United Arab Emirates. However, the 8th respondent being an influential person, respondents 1 to 7 are not acting on the International Arrest Warrant. It is under such circumstances that the petitioner seeks interference by this Court.

5. The Inspector General of Police, Crime Branch, Thiruvananthapuram Range, filed a Statement pursuant to the directions of this Court. In the Statement, it has been stated that in the case of extradition of an Indian national from India to UAE, the provisions contained in Article 5 of the Extradition Treaty is applicable. Article 5 of the Extradition Treaty reads as follows:-

> "The nationals of the Contracting States shall not be extradited to the other Contracting State provided that the requested State shall submit the case to its competent authorities for prosecution if the act committed is considered as an offence under the laws of both Contracting States."

6. Therefore, the Inspector General would contend that for getting the fugitive extradited, the Government of UAE has to send a formal request to the Government of India through diplomatic channels, strictly as per the provisions of the Treaty and the Central Government will decide whether to extradite the subject or to submit the case to the competent authorities for local prosecution under Section 188 Cr.P.C. No such request or Ext.P2 International Arrest Warrant is received by respondents 5 to 7, contended the Inspector General of Police.

7. On behalf of respondents 1 to 3, the Assistant Solicitor General of India filed a Statement. The ASGI stated that there is an Extradition Treaty between India and UAE currently in force. In terms of Article 5 of the Extradition Treaty, the nationals of the Contracting State shall not be

extradited to the other Contracting State provided that the requested state shall submit the case to its competent authority for prosecution if the act committed is considered as an offence under the laws of both Contracting States.

8. The ASGI further stated that as per Article 5 of India-UAE Extradition Treaty, the 8th respondent cannot be extradited to UAE. However, if an extradition request is made by UAE in respect of the 8th respondent, his case will be submitted to the competent authority for considering local prosecution in India.

9. The 8th respondent also filed a counter affidavit in the writ petition. The 8th respondent contended that the Hon'ble Apex Court in ***Bhavesh Jayanti Lakhani v. State of Maharashtra*** *[(2009) 9 SCC 551]* has held that arrest of a fugitive criminal can be made at the instance of Central Government only when request to this effect is received from foreign country and not otherwise. In the case of the 8th respondent, there is absolutely no material to hold that the 8th respondent is a fugitive criminal under the Extradition Act or to

hold that the Central Government has received any request from the UAE Government. The writ petition is therefore without any merit and is to be dismissed.

10. I have heard the learned counsel for the petitioner, the learned Assistant Solicitor General of India appearing for respondents 1 to 3 and the Additional 9th respondent, learned Government Pleader appearing for respondents 5 to 7 and the learned counsel appearing for the 8th respondent.

11. Ext.P3 is the Extradition Treaty between the Government of the Republic of India and the United Arab Emirates signed at New Delhi on 25.10.1999. Article 5 of Ext.P3 Extradition Treaty reads as follows:-

> "The nationals of the Contracting States shall not be extradited to the other Contracting State provided that the requested State shall submit the case to its competent authorities for prosecution if the act committed is considered as an offence under the laws of both Contracting States."

Therefore, it is evident that nationals of Contracting States shall not be extradited unless there is a request made by the State concerned.

12. In the case on hand, the Assistant Solicitor General of India representing respondents 1 to 3 and additional 9th respondent as also Government Pleader representing respondents 5 to 7 have categorically stated that no such request has been received from the Government of UAE seeking extradition of the 8th respondent. Therefore, going by the Extradition Treaty, the 8th respondent cannot be extradited to the United Arab Emirates.

13. The contention of the petitioner is that the Government of Dubai has issued an International Arrest Warrant in Case No.43177/Penal/2017 by Dubai Court ordering the arrest of the 8th respondent for pursuing him locally and internationally. Article 8 of Ext.P3 Extradition Treaty would show that the request for extradition shall be made in writing and dispatched through the diplomatic channels with supporting documents and particulars. The warrant of arrest is only one of the documents made mention in Article 8 of the Extradition Treaty. In view of the specific provisions contained in the Extradition Treaty between the

Government of Republic of India and the United Arab Emirates, an International Arrest Warrant by itself will not suffice to arrest an accused and extradite him to UAE. For extradition, definitely there should be a request for extradition in writing which should be dispatched through diplomatic channels. In the absence of such a request in terms of Article 5 of the Extradition Treaty, Ext.P2 International Arrest Warrant issued by the Government of Dubai would not be sufficient to apprehend the 8th respondent and extradite him to UAE.

In the circumstances of the case, no orders can be passed or directions be given to respondents 1 to 7 to extradite the 8th respondent to UAE for prosecution. No relief can be granted to the petitioner in the circumstances of the case. The writ petition is therefore dismissed.

Sd/-
N. NAGARESH, JUDGE

aks/18.12.2020

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE JUDGMENT IN CASE NO.9977/2016 DUBAI COURT DATED 25.05.2017 WITH LEGAL TRANSLATION.**
EXHIBIT P2	**TRUE COPY OF THE INTERNATIONAL ARREST WARRANT ISSUED AGAINST THE 8TH RESPONDENT BY PUBLIC PROSECUTION, GOVERNMENT OF DUBAI DATED 16.05.2018 WITH ENGLISH TRANSLATION.**
EXHIBIT P3	**TRUE COPY OF THE EXTRADITION TREATY EXECUTED BETWEEN INDIA AND UNITED ARAB EMIRATES.**
EXHIBIT P4	**TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE INTERPOL NODAL OFFICER OF KERALA POLICE DATED 05.07.2019.**
EXHIBIT P5	**TRUE COPY OF THE COMMUNICATION ISSUED BY THE OFFICE OF THE 5TH RESPONDENT DATED 27.08.2019.**
EXHIBIT P6	**TRUE COPY OF THE JUDGMENT IN APPEAL NO.904/2019 DATED 16.04.2019 BY APPELLATE COURT, DUBAI, WITH TRANSLATION.**

RESPONDENTS' EXHIBITS:

EXHIBIT R8 A	**COPY OF THE FI.R. AND PRIVATE COMPLAINT IN CRIME NO. 1698/2017 OF CHAVARA POLICE STATION**
EXHIBIT R8 B	**COPY OF THE COMPLAINT IN ST NO. 198/2016 OF JCM COURT- 1 CHENGAOOR.**