

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.HARIPRASAD**

**TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937**

**Bail Appl..No. 5500 of 2015 ()**

**CRL.M.P. 1729/2015 IN OS NO. S.14/86/2015 (OS NO. 143/2015) AIR CUS. COCHIN OF  
ADDITIONAL CHIEF JUDICIAL MAGISTRATE (EO) COURT, ERNAKULAM**

**PETITIONER/ACCUSED :**

**EDWIN ANDREW MINIHAN,  
S/O.EOIN, AGED 40 YEARS, VILLA 67, STREET 3  
SPRINGS 6, P.O.BOX NO.45982, DUBAI.**

**BY ADVS.SRI.SUNIL NAIR PALAKKAT  
SRI.K.N.ABHILASH**

**RESPONDENT/COMPLAINANT :**

**SUPERINTENDENT OF CUTOMS,  
SPECIAL INTELLIGENCE AND INVESTIGATION BRANCH (SIIB)  
CUSTOMS HOUSE, COCHIN.**

**BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29-09-2015,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**Mn**

**A. HARIPRASAD, J.**

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**Bail Appl. No.5500 of 2015**  
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**Dated this the 29<sup>th</sup> day of September 2015**

**O R D E R**

Bail application filed under Sec.439 Cr.P.C.

2. Petitioner is the accused in O.S. No.A.14/86/2015 (O.S.143/2015 Air Customs, Cochin), pending before the Additional Chief Judicial Magistrate (Economic Offences) Ernakulam, registered for the offences punishable under Secs.132 and 135 of the Customs Act. The prosecution allegation is that, on 14.07.2015, the petitioner was found carrying undeclared gold in his coat pocket smuggled from a foreign country. The petitioner is an Irish national. From that day onwards, he is in custody.

3. Heard the learned counsel for the petitioner and the learned Special Prosecutor appearing on behalf of the Air Customs.

4. Learned counsel for the petitioner submitted that the petitioner is undergoing incarceration for more than 60 days. Learned counsel has relied on, The Foreigners Order, 1948, decisions rendered by the

learned Single Judge in *Okowe Chigozie Collins v. State of Kerala and Others* [2015 (4) KHC 450], *Momin Mulla v. Sub Inspector of Police, Ernakulam District and Another* [2013 (3) KHC 175] and another decision of the Bombay High Court rendered by a Division Bench in *Nooria Y. Haveliwala v. State of Maharashtra* [2012 KHC 3612], to contend the proposition that the power to grant bail to a foreign national and the power to pass restriction orders are different and they are mutually exclusive.

5. Learned Prosecutor for the Air Customs contended that the investigation in this case is not over. Further, it is submitted that the petitioner is under detention in COFEPOSA as per Annexure R1 order.

After hearing both sides and after perusing the counter statement filed by the Air Customs, I am of the view that the petitioner can be enlarged on bail with the following strict conditions.

- i. The petitioner shall be released on bail on his executing a bond for Rs.1,00,000/-

(Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the Additional Chief Judicial Magistrate (Economic Offences) Ernakulam.

ii. The petitioner shall provide at least one local surety and the sureties shall produce documents to establish their identity and solvency.

iii. The petitioner shall stay in Ernakulam and furnish a local address to the Superintendent of Police, Customs House, Kochi.

iv. The petitioner shall furnish the phone number, e-mail address and other details to contact him as and when required by the Superintendent of Customs, Customs House, Kochi.

v. The petitioner shall appear between 10.00 a.m. and 11.00 a.m. on alternate Sundays after execution of the bond in the office of the

Commissioner of Police until the trial is over.

vi. The petitioner shall not intimidate or attempt to influence the witnesses, nor shall he tamper with the evidence.

vii. The petitioner shall not involve in any other offence during the period of bail.

In case of violation of any of the above conditions, the learned Magistrate is empowered to cancel the bail in accordance with law without referring the matter to this Court.

Sd/-  
**A. HARIPRASAD**  
**JUDGE**

/ True Copy /

P.A. To Judge

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