

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

Bail Appl..No. 8710 of 2014 ()

**CRIME NO. 1661/2012 OF CHERANALLOOR POLICE STATION,ERNAKULAM DISTRICT
(C.B. CID CR/148/CR/HHW-II/EKM/2013)**

PETITIONER/4TH ACCUSED:

**BHUVANESWARAN @ ISWAR, AGED 32 YEARS,
S/O. CHANDRAN, PERIYAVEEDU, MARUTHA PANDI STREET,
VELLOOR.P.O., KALLIPPATTI POLICE STATION,
THIRUMANGALAM TALUK, MADURAI DISTRICT, TAMIL NADU,
PIN-606 905.**

**BY ADVS.SRI.MANJU ANTONEY
SRI.R.ANAS MUHAMMED SHAMNAD**

RESPONDENT/COMPLAINANT/STATE:

**STATE OF KERALA,
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE,
C.B.CID H.H.W.II ERNAKULAM IN CB CID CR. 148/CR/HHW-13
CR.NO.1661/12 OF CHERANALLOOR POLICE STATION)
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY DIRECTOR GENERAL OF PROSECUTION SRI.ASIF ALI

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 02-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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B.KEMAL PASHA, J.

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B.A. No.8710 of 2014

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Dated this the 2nd day of March, 2015

ORDER

Petition filed under Section 439 Cr.P.C.

2. The petitioner is the 4th accused in Crime No.1661 of 2012 of the Cheranalloor Police Station, presently pending as C.P. No.10 of 2013 before the Judicial First Class Magistrate's Court-II, Ernakulam. Presently, the crime is being investigated further under Section 173(8) Cr.P.C. by the CBCID, by re-registering it as Crime No.148/CR/HHW-II/EKM/2013. The offences alleged against the petitioner and the other accused are under Sections 120B, 419, 341, 365, 323, 324, 326, 302 and 201 read with Section 34 of the Indian Penal Code.

3. The allegations are relating to the murder of one Imthiyas, who had been allegedly a partner in crimes with a notorious criminal. The said criminal, with whom, he was part and parcel of, entertained enmity towards A1 and consequently, it is alleged that A1 had decided to do away with Imthiyas. The murder was executed in precision as per plans. The investigation has revealed that the petitioner was also part and parcel of the gang which had committed the murder of Imthiyas. The petitioner has been in custody for the period from 12.03.2013 onwards.

4. At first, a Final Report was filed before the court below. Noting down some serious infirmities, the investigating officer wanted to investigate further in the matter and thereby they have started further investigation under Section 173(8) Cr.P.C. When the original Final Report was filed within the statutory period, the petitioner was not entitled to statutory bail under Section 167(2) Cr.P.C.

5. Heard learned counsel for the petitioner and the

learned Director General of Prosecution.

6. The learned counsel for the petitioner has pointed out that this is nothing but blatant violation of the solemn right of the accused under Article 21 of the Constitution of India and the petitioner is being unnecessarily detained for no fault of him. It is also pointed out that the accused is a person hailing from Tamil Nadu and the justice is being denied to him especially when the 6th accused was granted bail by the learned Magistrate by stating that there are no allegations against the 6th accused in the case.

7. On a perusal of the Final Report, as pointed out by the learned counsel for the petitioner himself, it seems that concrete allegations are there, in the case as against the 6th accused and may be, by committing a mistake, the learned Magistrate has found that no allegations were there as against the 6th accused in the Final Report. Any how, the investigating officer cannot be found fault with in the said mistaken observations made by the learned Magistrate

which has resulted in enlarging the 6th accused on bail under Section 167 (2) Cr.P.C.

8. The learned DGP has produced a report of the Inspector General of Police, CB CID, HHW CSO, Thiruvananthapuram in a sealed cover, which clearly reveal that some serious lapses were there on the part of the investigating officer in filing the original Final Report in the matter, which has necessitated a detailed further investigation in the matter under Section 173(8) Cr.P.C. On going through the bullet points clearly noted in the report contained in the sealed cover, this Court is of the view that the matter has to be thoroughly investigated further, for which some more time is required in the matter.

9. The points noted as bullet points in the report are to be thoroughly investigated upon. A further Final Report has to be filed in the matter as expeditiously as possible. Such an investigation is required not only for the prosecution, but also for the safety and security of the accused in the case.

The truth has to come out; even though we are not behind truth. For the ends of justice, on the side of the accused also, an impartial investigation on the points noted in the report has to be carried out. Considering all the above, I am of the view that a time limit for such further investigation and for filing further Final Report has to be fixed in the matter. The present bail application is devoid of merits at present. From the available materials, it seems that *prima facie* the records reveal the complicity of the petitioner in the matter. If the petitioner and the other accused, who are undergoing detention in the case, are set at liberty at present, there will not be any meaning in carrying out a further investigation in the matter, as rightly pointed out by the learned DGP. Matters being so, I am of the view that the petitioner is not entitled to be enlarged on bail at present. At the same time, the investigating officer shall take all necessary steps to complete further investigation in the matter, as expeditiously as possible, at any rate within sixty days from today, as a

deadline.

In the result, this bail application is dismissed with the aforesaid observations.

Return the report filed in the sealed cover to the learned DGP.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/2/3/15

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P.A. To Judge