

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

Crl.MC.No. 1909 of 2015 ()

**CMP 8940/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT, MALAPPURAM
CRIME NO. 406/2014 OF VAZHAKKAD POLICE STATION, MALAPPURAM DISTRICT**

PETITIONER/PETITIONER:

**SHIHABUDHEEN, AGED 28 YEARS
S/O. MUHAMMED, VENNATHODI HOUSE
OMANOOR P.O., MALAPPURAM DISTRICT**

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENT/RESPONDENT:

**STATE OF KERALA, REPRESENTED BY S.I. OF
POLICE, VAZHAKKAD, MALAPPURAM DISTRICT
BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM**

BY Sr.PUBLIC PROSECUTOR SMT. SAREENA GEORGE P.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

CRL.M.C.1909/2015

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A COPY OF THE ORDER DATED 6.12.2014 PASSED BY THE JUDICIAL
FIRST CLASS MAGISTRATE COURT, MALAPPURAM IN CMP
NO.8940/2014**

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.1909 of 2015

Dated this the 24th day of March, 2015

O R D E R

The petitioner herein is the registered owner of a lorry bearing No.KL-18C-6135 involved in Crime No.406/2014 of the Vazhakkad Police Station, registered under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 Act (for short, 'the Sand Act'). Pending investigation, he made application before the Judicial First Class Magistrate Court, Malappuram for interim custody of the vehicle under Section 451 Cr.P.C. as CMP No.8940/2015. The learned Magistrate granted relief on certain conditions. The petitioner is aggrieved by one of the conditions directing him to furnish security by bank guarantee for Rs.70,000/-. It appears that the position recently settled by this Court was not brought to the notice of the learned Magistrate. Of course, the pre-amendment decisions are to the effect that strict conditions will have to be imposed. But in view of the provisions under Section 23A of the Sand Act, brought by amendment, the Judicial Magistrate acting under Section 451 Cr.P.C., or under Section 457 Cr.P.C. will have discretion in imposing appropriate conditions. This Court has cleared the legal position in a post amendment decision. I find

that the objectionable condition can be set aside. The other conditions imposed by the court will suffice to ensure production of the vehicle in court for confiscation purposes, or otherwise.

In the result, this petition is allowed in part. Condition No.3 imposed by the court below as per the order dated 26.12.2014 in Crl.M.P.No.8940/2014 will stand set aside.

Sd/-

P. UBAID, JUDGE

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