

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.MC.No. 2003 of 2015 ()

**CRIME NO. 2/2014 OF NEYYATTINKARA EXCISE RANGE OFFICE ,
THIRUVANANDAPURAM**

PETITIONER(S)/ACCUSED:

**UDAYAKUMAR AGED 42 YEARS
S/O.VELAYUDHA PANICKER
RESIDING AT NADAVATHUKANDAM PUTHEN VEEDU, POTTAYIL
ERICHALLOOR DESOM, KARODU VILLAGE, NEYYATTINKARA TALUK
THIRUVANANTHAPURAM (ACCUSED).**

**BY ADVS.SRI.V.S.THOSHIN
SRI.I.ARIF MUHAMMAD**

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
THROUGH THE EXCISE CIRCLE INSPECTOR
EXCISE CIRCLE OFFICE, NEYYATTINKARA TALUK
THIRUVANANTHAPURAM - 695 001.**

R BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07-04-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 2003 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1: THE CERTIFIED COPY OF THE BAIL APPLICATION, CRL.M.C.NO. 1871/2014 DATED 22/07/2014.

ANNEXURE 2: THE CERTIFIED COPY OF THE REMAND EXTENSION APPLICATION DATED 12/08/2014.

ANNEXURE 3: THE CERTIFIED COPY OF THE COMMON ORDER IN CRL.M.C.NO. 1871/2014 AND CRL.M.P.NO.2035/2014 SESSIONS JUDGE, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 2003 of 2015

Dated this the 7th day of April, 2015.

O R D E R

The petitioner herein is the first accused in Crime No.2 of 2014 of the Neyyattinkara Excise Range, registered under Section 20 (b) (ii) (c) of the NDPS Act. It is alleged that the petitioner was found carrying 34 kgs of Ganja. The petitioner has been in judicial custody ever since the date of arrest on detection. After the expiry of the maximum possible period of 180 days of judicial custody, the Investigating Officer filed an application before the Sessions Court, Thiruvannathapuram as Crl.M.P No.2035 of 2014 for extension of the remand period under the proviso to Section 36A (4) of the NDPS Act. Section 36A (4) provides that in respect of persons accused of an offence punishable under Section 19 or 24 or 27 A of the NDPS Act or offences involving commercial quantity of Narcotic Drugs or Psychotropic Substances, the reference to "ninety days" in sub Section (2) of Section 167 of the Code of Criminal Procedure, shall be construed as reference to "one hundred and eighty days". Thus normally the maximum period of remand possible, in a case involving commercial

quantity is 180 days. But the proviso to the sub-Section provides that if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special court may extend the said period up to one year on the report of the Public Prosecutor, indicating the progress of the investigation, and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days. Applying this proviso, the learned Sessions Judge allowed the request of the Investigating Officer, and extended the period of remand by order dated 18.8.2014. The said order is under challenge, and it is sought to be set aside.

2. On hearing both sides and on a perusal of the impugned order I find that the impugned order is liable to be set aside for two reasons. One is that the period of extension is not mentioned in the impugned order. What is authorized is extension for a maximum period of one year under the proviso. If the extended period is below one year, the said period must be specified in the order extending the period of judicial custody under the proviso. In this case the specific period of extension is not mentioned in the order. The other important legal ground is that application for extension was not filed by the learned Public Prosecutor in charge of the

case. The legal position is covered by a single bench of this court in **Appukuttan Vs State of Kerala [2013 (4) KHC 3669: 2013 (4) KLT 213]**. This court has made the legal position very clear that the application filed by the Public Prosecutor seeking extension of time under the proviso should indicate the progress of investigation, and also should specify the reason for further detention. Such necessary details are not there in the application filed by the Investigating Officer in this case. This court has also made it clear that such application for extension must be filed by the Public Prosecutor in charge of the case, and an application filed by the Investigating Officer endorsed by the Public Prosecutor will not suffice. The proviso is clear that in a case where such extension is required, request must be made by the Public Prosecutor in charge of the case, indicating the progress of investigation, and a specific reason for such extension. Here I find that application for extension was not filed by the Public Prosecutor as provided under the proviso to Section 36 A (4) of the NDPS Act. On this ground itself the impugned order is liable to be set aside. It is submitted that the petitioner has been in judicial custody for more than 1 year. The total period of detention authorized under the law during investigation is

hundred and eighty days. But the petitioner herein has been in custody for more than one year, and the Investigating Officer has not been able to submit final report so far. I find no justification for such extension in the present circumstances, even otherwise. Anyway, in view of the position settled by this court, and also in view of the fact that the impugned order is not specific and certain regarding the extended period, I find that the impugned order is liable to be set aside.

In the result, this Crl.M.C is allowed. The impugned order passed by the court below on 18.8.2014 on Crl.M.P 2035 of 2014 will stand set aside.

Sd/-

P.UBAID,
JUDGE