

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. 2184 of 2015 ()

**IN CMP 566/2014 of J.M.F.C.-II, HOSDRUG
CRIME NO. 7/2014 OF BEKAL POLICE STATION , KASARGOD**

PETITIONER(S):

- 1. ZUBAIR.A.K AGED 30 YEARS
S/O.AHAMMED KUMBAKODE, KOMBAKODE HOUSE, CHEROOR POST
VIDYANAGAR, KASARAGOD**
- 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECTOR
HIGH COURT OF KERALA, ERNAKULAM**

**BY ADVS.SMT.HEMALATHA
SRI.BINU GEORGE**

RESPONDENT(S):

**STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM**

R BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE. P.

**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. 2184 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE I: CERTIFIED COPY OF ORDER DATED 03.03.2014 PASSED BY JUDICIAL
FIRST CLASS MAGISTRATE COURT II, HOSDURG IN CMP NO.566/2014**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.2184 of 2015

Dated this the 7th day of April, 2015.

O R D E R

The petitioner herein is the registered owner of the vehicle No. KL-14-F-6010, involved in the Bakel Police Station Crime No.7 of 2014 registered under Section 20 of the Kerala Protection of River Bank and Regulation of Removal of Sand Act. During investigation the petitioner made an application before the Judicial First Class Magistrate Court-II, Hosdurg as C.M.P No.566 of 2014 for interim custody of the vehicle. The learned Magistrate granted interim custody on certain conditions. One of the condition is that the petitioner shall deposit 30% of the value of the vehicle assessed by the Joint Regional Transport Officer, and the other condition is that the petitioner shall furnish bank guarantee or immovable property security for the balance amount. The petitioner accordingly deposited the amount, and also produced his original title deed by way of property security. The petitioner is really

aggrieved by the second condition directing him to furnish bank guarantee or property security. Though he has complied with the conditions, and furnished security accordingly, he is really aggrieved, and he now wants the original title deed back for some other purposes. He made a request before the learned Magistrate, but the request was declined. Pending this proceeding, the petitioner brought Crl.M.A No.3146 of 2015 containing a challenge on the objectionable condition imposed by the learned Magistrate, and making a request to direct the court below to release his title deed. On hearing both sides, I find that the objectionable condition directing the petitioner to furnish bank guarantee or property security requires interference. This court has made things clear in a post amendment decision that after the introduction of Section 23 A in the Kerala Sand Act, Judicial Magistrate's dealing with the applications for interim custody of vehicle will have discretion in the matter of imposing appropriate conditions. If the claimant is entitled to claim interim custody of the vehicle, it can be released to him on appropriate rational, reasonable and practical conditions. Here there is already a direction to deposit 30% of the value

of the vehicle. The petitioner accordingly, deposited the amount. In the particular circumstance I find that the other condition directing the petitioner to furnish bank guarantee or property security will have to be set aside.

In the result, this petition is allowed. The condition No.2 imposed by the court below as per the impugned order dated 3.3.2014 in C.M.P No.566 of 2014, directing the petitioner to furnish bank guarantee or property security will stand set aside. The court below is directed to return the original title deed produced by the petitioner in court in compliance of the said condition.

Sd/-

P.UBAID,
JUDGE

sab