

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

CrI.MC.No. 2484 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN CMP 1240/2015 of J.M.F.C.-I, NEYYATTINKARA
DATED 30-03-2015**

CRIME NO. 133/2015 OF ARYANCODE POLICE STATION , THIRUVANANDAPURAM

PETITIONER(S)/PETITIONER:

**RAJAN.P AGED 44 YEARS
S/O.PARASU NADAR, RAJAN VILLA, MAMBAZHAKKARA
KARAKODE, PERUMPATHOOR P.O., NEYYATTINKARA.**

BY ADV. SRI.K.SANIL KUMAR

RESPONDENT(S)/STATE:

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21-05-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 2484 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A. A COPY OF THE CMP NO.1240/2015.

**ANNEXURE-B. CERTIFIED COPY OF THE ORDER DATED 30/3/2015 OF THE COURT OF
JFCMC-I, NEYYATTINKARA.**

RESPONDENT(S)' EXHIBITS

NIL.

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///True copy///

P.S. to Judge

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2484 of 2015

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Dated this the 21st day of May, 2015

O R D E R

The petitioner herein is the registered owner of the earth mover JCB of 2002 model bearing registration No.KL-2D-9768. The vehicle was taken into custody by the Police on 27.2.2015 in connection with Crime No.133/2015 of Aryancode Police Station, Thiruvananthapuram district, for offences under Sec.4(1) read with 21 of the Mines and Minerals (Development and Regulation) Act and the rules framed thereunder. The gist of the prosecution case is that on 25.2.2015 at about 8.45 p.m. the said JCB was involved in removing earth from a hill at Edaval, Keezharoor village without pass or licence and the case has been so registered. The petitioner submitted Anx.A application as Criminal Miscellaneous Petition No.1240/2015 before the Judicial First Class Magistrate's Court-I, Neyyattinkara, invoking the powers under Sec.451 of the Cr.P.C. for interim release of the vehicle to the petitioner. The learned Magistrate as per the impugned Anx.B order rendered on 30.3.2015 dismissed said Anx.A application on the ground that the said vehicle

was earlier involved in a similar offence and has thus violated the condition imposed earlier for such release directing the petitioner not to commit such similar offence and further that nowhere in Anx.A application the petitioner has stated that the vehicle will not be involved in similar offences hereinafter. According to the petitioner, the vehicle is kept unused and exposed to sunlight and rain and the same will be damaged and therefore, he seeks orders from this Court to interfere with the impugned Anx.B rejection order and to order interim custody of the vehicle to the petitioner in the light of the legal principles laid down by the Apex Court in *Sunderbai Ambala Desai v. State of Gujarat* reported in AIR 2003 SC 638.

2. When this matter came up for consideration on 17.4.2015, this Court had directed that the petitioner shall file an affidavit before this Court undertaking that if interim custody of the vehicle is given to him, it would not be used for committing any criminal offence including the offence as one in which he has now been charged in the present case. The petitioner has sworn to an affidavit dated 23.4.2015 in compliance with the above said direction issued on 17.4.2015 stating that he will ensure that the

said JCB vehicle will not be involved in similar offences in future.

3. Heard Sri.K.Sanil Kumar, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner has reiterated his submissions in the Criminal Miscellaneous Case and prayed for interim release of the vehicle subject to any strict conditions that may be deemed appropriate by this Court. The learned Public Prosecutor, on instructions, submits that the offences alleged against the petitioner are those under Sec.4(1) read with Sec.21 of the Mines and Minerals (Development and Regulation) Act and the rules framed thereunder. The Prosecutor would further submit that as the petitioner's involvement in the commission of present offence would amount to violation of the earlier condition imposed by the court below that he shall not commit such similar offences, this Court may take a serious view of the matter and if this Court is inclined to exercise discretion for ordering the release of the vehicle as prayed for by the petitioner, then stringent and strict conditions may be imposed in the interest of justice.

5. After hearing the learned counsel for the petitioner and

the learned Public Prosecutor and taking into account the totality of the facts and circumstances of the case and taking note of the interim order passed by on 17.4.2015 in this case, it is ordered in the interest of justice that Anx.B order passed by the court below shall stand set aside subject to the following conditions:

- (i) The petitioner shall remit an amount of Rs. 5,000/- by cash in the treasury and the same shall be appropriated by the public exchequer. This direction is issued as the petitioner has violated earlier condition imposed by the court below regarding the interim release of the same vehicle ordered on the previous occasion.
- (ii) The petitioner shall swear to an affidavit before the court below undertaking that he will not alienate or transfer the vehicle to any person in any manner during the pendency of the present criminal proceedings and further that the said vehicle will not be involved in any other offences or similar offences as the one in this case.
- (iii) The interim custody of the vehicle shall be released to the petitioner by the court below on the petitioner furnishing cash security for an amount of Rs. 25,000/- (rupees twenty five thousand only).

Subject to these conditions, interim release of the vehicle shall be granted to the petitioner by the court below.

6. The learned counsel for the petitioner further submits

that as the only offence involved is those under Mines and Minerals (Development and Regulation) Act and the rules framed thereunder, the case is compoundable as per the provisions of the Act and that liberty in this regard may be reserved for him to seek compounding the offence as permitted by the Act and the Rules framed thereunder. It is made clear that this order is without prejudice to any reliefs and contentions that are available to the petitioner in accordance with law.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge