

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

Crl.MC.No. 3126 of 2015 ()

CRIME NO. 139/2015 OF ENATHU POLICE STATION,PATHANAMTHITTA DISTRICT

PETITIONER/ACCUSED:

**BAINU BABY, AGED 27 YEARS,
S/O. LATE BABY, BAIJU BHAVAN, PAZHAKULAM P.O.,
PAZHAKULAM KIZHAKETHU MURI, PERINGANADU VILLAGE,
ADOOR TALUK, PATHANAMTHITTA.**

**BY ADVS.SRI.M.T.SURESHKUMAR
SRI.S.SANAL KUMAR
SMT.SMITHA PHILIPOSE**

RESPONDENT/COMPLAINANT:

**STATE,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KRALA, ERNAKULAM - 682 031.**

BY PUBLIC PROSECUTOR SMT. S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

Crl.MC.No. 3126 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEX A1 - TRUE COPY OF THE FIR AND FIS IN CRIME NO. 139/15 OF ENATHU
POLICE STATION DT. 05.3.15.**

**ANNEX A2 - TRUE COPY OF FIR AND FIS IN CRIME NO. 140/15 OF ENATHU POLICE
STATON DT. 05.3.15.**

RESPONDENT(S)' ANNEXURES:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3126 of 2015

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Dated this the 29th day of May, 2015

ORDER

The petitioner herein is the accused in Crime No.139/2015 of Enathu Police Station, Pathanamthitta district, for offences alleged under Secs.294(b), 326 and 506(1) of the I.P.C. It is the petitioner's case that he has been falsely implicated in Crime No.139/2015 and that it is a counter blast and that another Crime No.140/2015 of Enathu Police Station, is registered as against the defacto complainant in the instant Crime No.139/2015 and that the offences alleged in the said Crime No.140/2015 are those punishable under Sec.294(b), 452, 323, 427 read with 34 of the I.P.C., etc. The petitioner contends that even going by the allegations in the FI statement in Anx.A1 Crime No. 139/2015, none of the offences under Sec. 326 would be attracted and that even the offence under Sec.324 of I.P.C. is not attracted going by the allegations in the impugned Crime. The petitioner also relies on the decision of this Court in the case, Joy v. State of Kerala reported in

2014 (1) KLT 588. It is further averred that the petitioner is willing and ready to surrender before the Judicial First Class Magistrate's Court, Adoor, in the aforementioned crime, along with sureties. It is in the light of these aspects that the petitioner has filed the instant Crl.M.C. with the following prayers:

“.....to pass an order directing the Judicial Magistrate of First Class, Adoor to consider the bail application filed by the petitioner herein above, in the event of him surrendering before the above said court in connection with Crime No.139 of 2015 of Enathu Police Station and may issue directions to release the petitioner on bail, as the allegations only reveal bailable offences.”

2. Heard Sri.M.T.Suresh Kumar, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. Taking into account the totality of the facts and circumstances of this case, it is ordered in the interest of justice that in case the petitioner voluntarily surrenders before the Judicial First Class Magistrate's Court-I, Adoor, dealing with aforementioned Crime No. 139/2015 of Enathu Police Station, within a period of 20 days from today and submits necessary application for bail, then it is for the learned Magistrate concerned to consider the said application on the same day itself on merits and decide thereon in accordance with law, after taking into account the facts and

circumstances of this case. It will be open to the petitioner to rely on any appropriate decision of this Court or the Apex Court, which he may highlight in the said application and it is of the learned Magistrate to consider whether the legal principles laid down in those decisions are applicable to the petitioner's case. In order to ensure that Public Prosecutor concerned is afforded an reasonable opportunity of being heard on such application, the petitioner shall cause to serve advance notice of this application to the Public Prosecutor concerned attached to the Magistrate court concerned, at least 24 hours prior to such proposed surrender. It is made clear that it is exclusively within the province of the learned Magistrate to decide on the applications of the petitioner in accordance with law. It is further ordered that in case the petitioner does not surrender before the court below concerned as directed above, then the directions herein above will stand automatically vacated.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

Cr1.M.C.3126/215

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