

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Cr1.MC.No. 3127 of 2015 ()

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AGAINST THE ORDER IN Cr1.MC 6877/2014 of HIGH COURT OF KERALA  
DATED 16.12.2014

&

AGAINST THE ORDER IN CRMP 736/2014 of SPL.C SPE/CBI-II,  
EKM, DATED 17.09.2014 IN  
RC NO.14(A)/2013/CBI/ACB/COCHIN.

PETITIONER(S) :

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SUBAIR Y.M., AGED 44 YEARS,  
S/O.LATE V.P.ABDULLA HAJI, FLAT NO.09A,  
"ROYAL EMPRESS", MALABAR BUILDERS,  
APARTMNETS NEAR SALES TAX OFFICE, (P.O)ERANHIPALAM,  
CALICUT - 673 006.

BY ADVS.SRI.S.SREEKUMAR (SR.)  
SRI.M.A.MOHAMMED SIRAJ  
SRI.P.PRIJITH  
SRI.THOMAS P.KURUVILLA  
SRI.P.MARTIN JOSE

RESPONDENT(S) :

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CENTRAL BUREAU OF INVESTIGATION,  
REPRESETNED BY ITS STANDING COUNSEL  
HIGH COURT OF KERALA, ERNAKULAM 682 031

BY SRI.P.CHANDRASEKHARA PILLAI, C.B.I.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
11-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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*Cr1.MC.No. 3127 of 2015 ()*  
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APPENDIX

PETITIONER(S) ' EXHIBITS  
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ANNEXURE I:TRUE COPY OF ORDER DATED 17.09.2014 IN CMP.NO.736/2014.

ANNEXURE II:TRUE COPY OF THE COMMON ORDER DATED 05.11.2014 IN  
CRL.MP.NO.795/2014 AND CRL.MP.NO.826/2014.

ANNEXURE III:TRUE COPY OF THE ORDER DATED 16.12.2014 IN  
CRL.MC.NO.6877/2014 OF HIGH COURT OF KERALA.

ANNEXURE IV:CERTIFIED COPY OF ORDER DATED 16.03.2015 IN  
CRL.MP.NO.210/2015 IN RC.NO.14(A)/2013/CBI/ACB/COCHIN.

RESPONDENT(S) ' EXHIBITS  
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NIL

*// True Copy//*

*P.A. to Judge*

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**K. RAMAKRISHNAN, J.**

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Crl. M.C.No.3127 of 2015  
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Dated this the 11<sup>th</sup> day of September, 2015

**ORDER**

This criminal miscellaneous case is filed by the 14<sup>th</sup> accused in R.C.No.14(A)/2013/CBI/ACB, Cochin, to lift the condition No.4 imposed by the court below in the original bail order under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner was arrayed as 14<sup>th</sup> accused in R.C.No.14(A)/2013/CBI/ACB, Cochin, on the basis of an alleged disclosure statement given by one Shanavas, that he is also involved in the smuggling activity of gold along with other accused persons. He was arrested on 05.08.2015, while he was undergoing preventive detention under the COFEPOSA Act. Thereafter the detention order was revoked by the Government and the Special Court has granted bail to the

petitioner as per Annexure-A1 order with conditions inter alia that he shall reside within the limits of Kozhikode District and shall not leave beyond the limits of Kozhikode District without getting prior permission from the court. Thereafter he filed an application for lifting that condition and the CBI filed petition for directing the petitioner herein to appear before the investigating officer at Kochi and for that purpose condition No.4 will have to be modified. Both these applications namely, Crl.M.P.No.826/2014 and Crl.M.P.No.795/2014 were disposed of by Annexure-2 common order, allowing the application filed by the CBI and modified the condition No.4 temporarily, to enable the petitioner to go to Kochi for meeting the investigating officer, CBI, CBI Office at Kochi, on every Wednesday from 12.11.2014 for a period of one month and till remain at the said office till 4.00 p.m., and he was also permitted to leave Kozhikode District on every Sunday till 6.00 p.m., from 09.11.2014 onwards for a period of one month to go to Peringathur in Kannur District to see his ailing mother. He

challenged that order by filing Crl.M.C.6877/2014 before this court and this court dismissed the application stating that after change of circumstance he can move the same court. Subsequently he moved Crl.M.P.No.210/2015 for the same relief and that was allowed in part, permitting him to leave Kozhikode District on every Thursday between 7.00 a.m and 7.00 p.m commencing from 19.03.2015 for a period of one month for going to Peringathur in Kannur District to meet his ailing mother and he was also permitted to leave Kozhikode District in the evening of 17.03.2015 to report in the Chamber of the Commissioner of Customs at Customs House, Willingdon Island, Cochin-9 at 11.00 a.m., on 18.03.2015. Pursuant to the notice dated 04.03.2015 and on completion of hearing by the Commissioner, the petitioner shall return on the same day to Kozhikode. That order is being challenged by the petitioner by filing this petition.

3. The counsel for the petitioner submitted that he is conducting business at Thalassery and due to the

restriction imposed, he is not able to conduct the business properly and further investigation is almost over, so the condition is not necessary. Further his mother is ailing and his presence would be required to look after the mother also.

4. The application was opposed by the Standing Counsel for CBI/ Sri. Chandrasekhara Pillai, on the ground that, if he is allowed to go out of Kozhikode, he is likely to repeat similar offences.

5. It is an admitted fact that the petitioner was arrayed as 14<sup>th</sup> accused in the case and while he was undergoing detention under the detention order under COFEPOSA, he was arrested in connection with this crime, on 05.08.2014 and later after the detention order was revoked by the Government when he moved bail as per Annexure-1 order, bail was granted to him with conditions inter alia that he shall reside in Kozhikode District and shall not leave Kozhikode District without getting prior permission from the court. He moved another application as

Crl.M.P.No.826/2014 for lifting the condition and also permitting him to meet the mother who is ailing at Peringathur in Kannur District and this was disposed of by the lower court along with another application filed by the CBI as Crl.M.P.795/2014 by Annexure-2 common order and there also the condition imposed was not lifted but modified for the purpose of enabling him to appear before the investigating officer as requested by the investigating agency and also permitted him to go to Peringathur in Kannur District on every Sunday from 10.00 a.m. to 6.00 p.m., for a period of one month. Though this was challenged before this court by filing Crl.M.C.No.6877/2014, that was dismissed. Thereafter he again moved the present petition as Crl.M.P.No.210/2015 for the same relief and that was also partly allowed, allowing the petitioner to go to Peringathur to see his mother on every Thursday between 7.00 a.m and 7.00 p.m., for a period of one month from 19.02.2015 and also permitting him to report before the Chamber of the Commissioner of Customs at Customs

House at Willingdon Island on 18.03.2015 to enable him to attend the case, which is being challenged by the petitioner.

6. It is true that the investigation is almost over, but till the final report is filed considering the nature of offence alleged, the court below was perfectly justified in not lifting the condition completely. The court below also considered the fact that, business of the petitioner can be conducted in his absence also through persons. But considering the fact that instead of permitting the petitioner to go and meet the mother once in a month that is on Thursday, this court feels that he can be permitted to go to Peringathur in Kannur District to meet the mother on every Friday between 6.00 a.m and 7.00 p.m., till the final report is filed. But this court is not inclined to lift the condition imposed by the court below that he should not leave Kozhikode District till the final report is filed. The petitioner shall not indulge in any illegal activities during this period when he was permitted to go outside Kozhikode District. He is also permitted to go to Thalassery to

supervise his business on the date on which he was permitted to meet his mother also, till the final report is filed. If there is possibility of inordinate delay in filing the final report, the right of the petitioner to move the lower court for modification of the conditions imposed is left open.

With the above modification of the condition imposed, the petition is disposed of.

Sd/-

**K. Ramakrishnan, Judge**

*// True Copy//*

*P.A. to Judge*

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