

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

Crl.MC.No. 3165 of 2015 ()

**(CRL.M.P.NO.929/2015 IN OS.NO.2/215 OF AIR CUSTOMS KARIPUR PASSED BY THE
COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E.O), ERNAKULAM)**

PETITIONER/ACCUSED:

**BANGARAKUNNU ABOOBACKER SADATH,
S/O.ABOOBACKER BANGARAKUNNU MOHAMMED,
THAIVALAPPIL HOUSE, NELLIKUNNU, KASARGOD P.O.,
KASARGOD, KERALA-671 121.**

BY ADV. SRI.MANU TOM

RESPONDENT/COMPLAINANT/STATE:

- 1. SUPERINTENDENT OF CUSTOMS
AIR INTELLIGENCE UNIT, CALICUT INTERNATIONAL AIRPORT
AIR CUSTOMS, KARIPUR,PIN- 673 647.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSEUCTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV.SRI.A.SALISH
R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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Crl.MC.No. 3165 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEX A: TRUE COPY OF THE ORDER DATED 28.1.2015 IN CRL.M.P.196 OF 2015
PASSED BY THE COURT OF THE ADDL. CHIEF JUDICIAL
MAGISTRATE (ECONOMIC OFFENCES), ERNAKULAM.**

**ANNEX B: TRUE COPY OF THE LETTER DATED 10.4.15 FROM PETITIONER'S
EMPLOYER PAACHU'S SAMEER CARGO PACKAGING SERVICES, LLC,
DUBAI.**

**ANNEX C: CERTIFIED COPY OF THE ORDER DATED 25.5.2015 IN CRL.M.P.929 OF
2015 BY THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE
(ECONOMIC OFFENCES), ERNAKULAM.**

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

Crl.M.C.No.3165 Of 2015

Dated this the 2nd day of June, 2015.

ORDER

The prayer in this Crl.M.C is for a direction to exercise this Court's inherent powers conferred under Sec.482 Cr.P.C and to set aside the impugned Annexure-C order dated 25.5.2015 passed by the Additional Chief Judicial Magistrate (Economic Offences) Court, Ernakulam, in Crl.M.P.No.929/2015 in Occurrence Statement O.S.No.2/2015 of Air Intelligence Unit, Air Customs, Calicut International Air Port, Karipur. By Annexure-A order the petitioner was granted bail by the court below and condition No.3 thereof stipulates that he shall surrender his passport before the court below. The petitioner complied with the terms and conditions of that bail order and surrendered his passport and enjoyed the benefit of the bail granted by the court below. Thereafter, he submitted Crl.M.P.No.925/2015 in the above said case before the court below praying that the aforementioned condition No.3 of Annexure-A which directed him to surrender his passport before the court below shall be deleted and allow him to travel abroad. The said application, Crl.M.P.No.925/2015 was considered by

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the court below and rejected the prayer of the petitioner herein who has allegedly said to have smuggled gold bars of foreign origin on 2.1.2015 weighing 8.985 kg of value Rs.2.5 Crores. The customs prosecution had opposed the plea made by the petitioner for return of the passport. The court below also took into account that there is a proposal of detention of the petitioner under COFEPOSA which has already forwarded to Government of Kerala vide letter dated 26.3.2015. In the aforementioned conspectus of the factual situation that the petitioner was facing serious allegations that he smuggled gold bars of foreign origin on 2.1.2015 weighing 8.985 kg of value Rs.2.5 Crores and also taking into account that there is a proposal for detention of the petitioner under COFEPOSA, the court below held that petitioner cannot be allowed to leave India now. It is this order at Annexure-C which is under challenge in this Crl.M.C filed under Sec. 482 Cr.P.C.

2. Heard Sri.Manu Tom, learned counsel for the petitioner, Sri.A.Salish, learned counsel appearing for the 1st respondent-Customs Authority and the learned Public Prosecutor appearing for the 2nd respondent-State of Kerala.

3. The respective parties appearing through the learned Advocates/Prosecutor concerned reiterated the submissions. Having

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regard to the fact that the allegations raised against the petitioner is that he had smuggled gold bars of foreign origin on 2.1.2015 weighing 8.985 kg of value Rs.2.5 Crores and having regard to the fact that the proposal for detention of the petitioner under COFEPOSA is pending consideration of the authorities concerned, this Court is of the considered opinion that the court below has not committed any illegality or perversity in passing the impugned order. In this view of the matter, this Court is not persuaded to interfere with the impugned order by invoking its extra ordinary discretion conferred under Sec. 482 Cr.P.C, which time and again, has been repeated to be held in court rulings that such power could be exercised only with lot of caution and circumspection.

Accordingly, the Crl.M.C stands dismissed.

ALEXANDER THOMAS,
Judge.

bkn/-