

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.MC.No. 3211 of 2015

**AGAINST THE ORDER IN Bail Appl.No.2542/2015 of HIGH COURT OF KERALA
DATED 12-05-2015**

CRIME NO.336/2014 OF THUMBA POLICE STATION , THIRUVANANTHAPURAM

PETITIONER/IST ACCUSED :-

**BERTIN ANTONY, AGED 37 YEARS,
S/O.HAROLD ANTONY,
HOUSE NO.163,
ST. CHARLES LANE,
PALLITHURA, VELI,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA**

RESPONDENT(S)/RESPONDENT/STATE OF KERALA:

- 1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682031.**
- 2. THE ASST COMMISSIONER OF POLICE,
SHANGUMUGHAM SUB DIVISION
THIRUVANANTHAPURAM-695001.**

R BY SMT.SAREENA GEORGE, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
04-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 3211 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE-A : TRUE COPY OF THE ORDER DATED 12/5/2015 IN BA 2542/2015.

ANNEXURE-B : TRUE COPY OF THE NOTICE DATED 28/5/2015.

RESPONDENT(S)' ANNEXURES : NIL

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//TRUE COPY//

P.A. TO JUDGE

ALEXANDER THOMAS, J

Crl.M.C.No.3211 of 2015

Dated this the 4th day of June, 2015

ORDER

The Crl.M.C. is filed with a prayer to quash the impugned Annexure-B. Notice issued by the second respondent, Investigating Officer in purported exercise of the powers under Section 91 of the Code of Criminal Procedure. The petitioner is accused No.1 in Crime No.336/2014 of Thumba Police Station, Thiruvananthapuram for offences registered under Section 304 (B) read with Section 34 of the Indian Penal Code. He and all the other accused had secured anticipatory bail as per Annexure-A2 order dated 12.05.2015 passed by this Court in Bail Application No.2542/2015 wherein the following conditions alone were imposed by this Court;

i) The petitioners shall be released on bail after interrogation on their executing a bond for ₹25,000/- (Rupees twenty five thousand only) each with two solvent sureties each for the like sum if they are arrested by the Police in connection with this case.

ii) They shall appear before the Investigating Officer for interrogation if they are so required by the Investigating Officer in writing.

iii) They shall not destroy or tamper with evidence.

iv) In case of violation of any of the above conditions, the learned Magistrate is empowered to cancel the bail in accordance with the law.

2. Those conditions imposed in Annexure-A3 that the petitioner would surrender his passport before the court below in connection with the bail order in his favour in this crime. According to the petitioner, he has complied with all the conditions in the bail order and he has no complaint whatsoever that it he has been in anyway he has removed and violated any of the conditions in the said bail order under Section 91 of the Code of Criminal Procedure, directing the petitioner to deposit the passport before the Court below. It is this order at Annexure-B that is under challenge.

3. Heard Sri.V.Suman Chakravarthi, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent, State of Kerala.

4. Section 91 of the Code of Criminal Procedure reads as follows;

“91. Summons to produce document
or other thing.–

(1) Whenever any Court or any officer in

charge of the police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

3) Nothing in this section shall be deemed–

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

5. Learned counsel for the petitioner submits that the summoning of the document referred to in Section 91 can only be in relation to the document which is involved into the commission of the offence in this stage and admittedly in this case, the petitioner is alleged to commit the offence under Section 304(B) and read with Section 34 of the Indian Penal Code and there is no whisper of the allegation therein that the said passport has been used interalia for the commission of the said alleged offences stated therein. Accordingly the learned counsel contends that the

very basic jurisdictional facts required for the jurisdictional power under Section 91 of the Code of Criminal Procedure are non-existent in the facts and circumstances of this case. It is further alleged by the learned counsel for the petitioner that this Court had considered the anticipatory bail application made by the petitioner and this Court came into a conclusion in Annexure-A order that such a condition to surrender the passport may not be necessary in the facts of the case and that so the order is silent about this. Therefore, the petitioner undertakes that he would swear to affidavits before the Court below and the Investigating Officer that he would travel abroad only after getting prior permission of the Magistrate Court and that he is even prepared to show the passport for perusal of the Investigating Officer, which he should promptly return back.

6. True that this Court while passing the pre-arrest bail order, had chosen not to impose the condition to surrender the passport before the court below. The contention of the petitioner that the jurisdictional facts envisaged in Section 91 of the Code of Criminal Procedure is non-existent also appears to be prima facie correct. But when the Investigating Officer is of the considered

opinion that the petitioner will have to surrender his passport before the court below, this Court cannot simply brush aside such a stand of the Investigating Officer, because, matters connected with the investigation is within the primary domain of the investigating agency concerned. It is their primary concern to ensure that the accused makes themselves easily available for trial. One of the concern expressed by Sri.Sunil Chakravarthy, learned counsel for the petitioner is that if the passport is surrendered before the court below, there could be endorsement made in the passport regarding the details of the case, etc and that this may prejudice his chances for employment abroad later.

7. Having regard to the totality in the facts and circumstances of the case, this Court is of the considered opinion that the impugned order is not liable for any substantial interference. Accordingly it is ordered that the petitioner shall immediately surrender the passport before the court below concerned, which that court shall keep in safe custody. But it is further ordered the court below concerned may not make any endorsement in the passport regarding the involvement of the petitioner in this case and the said passport will be kept in the

safe custody in the office of the court below concerned. It is open to the petitioner to make any appropriate application at the appropriate stage before the court below concerned seeking permission of the Court to travel abroad, in case any such genuine need arises and it is for the court below concerned, to take appropriate decision on such application after hearing the prosecution agency as well as the petitioner and in the light of the court rulings in that regard. In the eventuality of the petitioner securing such permission to travel abroad, then certainly the court below concerned, will release the passport to the petitioner, based on such orders.

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

Sd/-
ALEXANDER THOMAS
JUDGE

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P.A. TO JUDGE