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. 3280 of 2015

CBCID CRIME NO.364/CR/13 OF PERAMBRA POLICE STATION

CRIME NO. 391/2011 OF PERAMBRA POLICE STATION, KOZHIKODE

PETITIONER(S)/ACCUSED:

AJEESH N., 39 YEARS,
D/O. BALAKRISHNAN NAIR, NAMBYAKKAL VEEDU, VIYYUR.

BY ADV. SMT.K.DEEPA (PAYYANUR)

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.S.HYMA

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

msv/

Crl.MC.No. 3280 of 2015

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1 TRUE COPY OF THE FIR OF CRIME NO.391/2011 OF PERAMBRA POLICE STATION.

ANNEXURE 11 TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE INJURED BEFORE THE JFMC , PERAMBRA AS C.M.P.NO.2429/11.

ANNEXURE 111 TRUE COPY OF THE ORDER NO.D1-3443/CB/HHW/III/KKD/2013 DATED 29/10/13

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ALEXANDER THOMAS, J.

Crl.M.C.No.3280 Of 2015

Dated this the 4th day of June, 2015.

ORDER

The petitioner is an advocate. The prayer in te above captioned Criminal Miscellaneous Case is as follows:

> ".....to issue direction to release the petitioner on bail on the same day of the filing of the bail application in C.B.C.I.D Crime No.364/CR/13 of Perambra Police Station - Crime No.391/2011 of Perambra police station, Kozhikode."

2. It is averred by the petitioner that he was never arrayed as an accused in the original Annexure-I Crime No.391/2011 of Perambra Police Station, Kozhikode (Rural) registered for offences under Secs.143, 147, 148, 324, 326, 307 r/w 149 IPC. It was further stated by the petitioner that in Annexure-II private criminal complaint filed before the Judicial First Class Magistrate Court, Perambra as Crl.M.P.No.2429/2011, the petitioner was not arrayed as an accused. It is alleged that it is only due to extraneous consideration that the petitioner was arrayed as an accused consequent to the entrustment of the investigation to the crime by the Crime Branch where the crime was

re-numbered as C.B.C.I.D Crime No.364/CR/13 of Perambra Police Station. It is pointed out by the learned counsel for the petitioner that this Court as per order dated 2.9.2014 in B.A.No.6008/2014 was not inclined to grant anticipatory bail to the petitioner solely on the ground that the petitioner had not appeared before the Investigating Officer in pursuance of the notice issued under Sec. 161(2) of the Cr.P.C. It is alleged by the petitioner that he has been unlawfully arrayed as an accused in this case consequent to the entrustment of the investigation to the new agency and that the investigation is already over and that there is no necessity whatsoever to detain the petitioner under arrest for custodial investigation. That the petitioner is ready and willing to appear before the jurisdictional Magistrate concerned and submit necessary application for bail and that the petitioner undertakes that he will co-operate with the investigation and this Court may impose any condition to release the petitioner on bail and that the petitioner is a law abiding citizen, who is a practising as an Advocate in the Koyilandy Bar and that he has no criminal antecedents whatsoever. Learned counsel for the petitioner submits that the petitioner genuinely apprehends that in case he voluntarily surrenders before the jurisdictional Magistrate

there could be some misunderstanding on the issue of grant of bail to the petitioner since this Court as per order dated 2.9.2014 in B.A.No.6008/2014 was not inclined to grant pre-arrest bail to the petitioner solely on the ground that he had not appeared before the Investigating Officer consequent to the issuance of notice under Sec. 161(2) Cr.P.C. It is in the light of these aspects the petitioner has filed the instant Crl.M.C with the aforementioned prayer.

3. Heard Smt.K.Deepa, learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State.

4. On a perusal of this Court's order dated 2.9.2014 in B.A.No.6008/2014 it can be seen that this Court was not inclined to grant pre-arrest bail to the petitioner mainly on the ground that he had not appeared before the Investigating Officer in pursuance of notice under Sec. 161(2) Cr.P.C. This order was rendered on 2.9.2014 at the stage of pendency of investigation. It is made clear that the non-entertainment of the pre-arrest bail plea of the petitioner by this Court as per order dated 2.9.2014 solely on the ground of his not having appeared before the Investigating Officer in pursuance of notice under Sec. 161(2) Cr.P.C shall not by itself be taken as an adverse factor at this

stage in the matter of grant of bail by the learned jurisdictional Magistrate concerned. It is pointed out by the petitioner that the investigation is almost over and that there is no necessity for any custodial interrogation at this stage and that the petitioner is willing to abide by any condition that may be imposed by the court and that he is ready and fully willing to co-operate with the investigation in any manner as may be directed by this Court, etc.

5. On a consideration of the totality of the facts and circumstances of this case, it is ordered in the interest of justice that in the event of the petitioner voluntarily surrendering before the jurisdictional Magistrate concerned without any further delay, preferably within 3 weeks and submits necessary application for grant of bail, then the learned Magistrate shall consider such application on the same day itself on merits and pass appropriate orders thereon taking into account the facts and circumstances of the case. It is reiterated that the non-entertainment of the pre-arrest bail plea of the petitioner by this Court on 2.9.2014 in B.A.No.6008/2014 on the ground that he had not appeared before the Investigating Officer pursuant to notice under Sec. 161(2) Cr.P.C shall not by itself be taken as an adverse factor at this

stage for the grant of bail. It is further ordered that the petitioner will give advance copy of the above stated application to the learned prosecutor concerned attached to the jurisdictional Magistrate concerned at least 24 hours prior to his proposed appearance before the jurisdictional Magistrate concerned.

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

ALEXANDER THOMAS,
Judge.

bkn/-