

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Crl.MC.No. 3444 of 2015  
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CRL.M.P.NO.1853/2015 IN SC 134/2006 OF ADDL. SESSIONS COURT-II (ADHOC-II),  
THALASSERY.  
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PETITIONER/ACCUSED NO.4:  
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VINOD C, S/O.NARAYANAN,  
AGED 40, 'CHATHAMBALLY HOUSE',  
KODIYERI AMSOM, MOOZHIKKARA DESOM,  
MOOZHIKKARA.P.O.

BY ADV. SMT.V.K.HEMA

RESPONDENT/STATE:  
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STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, KANNUR  
(REPRESENTING THE SUB INSPECTOR OF POLICE,  
NEW MAHE POLICE STATION, KANNUR DISTRICT.)

\*ADDL. R2 IMPEADED

2. THE REGIONAL PASSPORT OFFICER,  
REGIONAL OFFICE, KOZHIKODE - 673 001.

ADDL. R2 IS IMPEADED AS PER ORDER  
DATED 25.06.2015 IN CRL.M.A.5558/2015.

R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE  
R2 BY SRI. N. NAGARESH A S G OF INDIA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

mbr/

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**APPENDIX**

**PETITIONER'S ANNEXURES:**

**ANNEXURE A1 :        ORDER DATED 25.4.2015 IN CRL.M.P.NO.1853/2015 IN  
                             S.C.134/2006 OF THE ADDITIONAL COURT OF SESSIONS-II  
                             (ADC-II) THALASSERY.**

**RESPONDENTS' ANNEXURES:                NIL.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**mbr/**

ALEXANDER THOMAS, J.

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Crl.M.C.No.3444 Of 2015  
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Dated this the 24<sup>th</sup> day of June, 2015.

ORDER

The petitioner is the accused No.4 in S.C.No.134/2006 on the file of the Court of Additional Sessions Judge (ADC II), Thalassery, for offences punishable under Secs.143, 147, 148, 302, 379, 307 & 506(ii) IPC. It is stated that the petitioner is a businessman running hotel at Thalassery and that the petitioner is innocent of the charges and he is already on bail and executed sufficient bail bond before the aforesaid Sessions Court concerned. It is stated that the petitioner intends to go 'Mount Kailas' for prayers and pay homage that he needs a passport for the said pilgrimage since 'Mount Kailas' is now under the territorial control of the Chinese Government. That since criminal case is pending against him, the passport authority will not issue passport without authority of the competent court and petitioner had approached the above said Sessions Court seeking permission to go abroad for a period of two years by filing application under Sec.6(2)(F) and Sec.22(a) of the Passports Act and under Sec.205 of the Cr.P.C. as per

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CrI.M.P.No.1835/2015 in S.C.No.134/2006 filed before the above said Sessions Court.

2. The learned Additional Sessions Judge-II, Thalassery, as per Anx-1 order allowed the said application and directed the Regional Passport Officer to issue a new Passport to the petitioner, but the permission to go abroad was given for a period of just one month only. It is stated that the period of one month is insufficient as the 'Kailas Yathra' itself will take a minimum time of more than 25-30 days and the duration of the said yathra may be more if the climatic conditions are not favourable. Moreover, applicants will have to stay at New Delhi for approximately 4 days for completing all the visa formalities after the application. More so, all the applicants will not get the visa immediately after the application. Sometimes an applicant may need to apply more than once. In every year the 'Kailas Yathra' will be from May to September only. So a pilgrim may have to wait for about 1-2 years for getting selected to the pilgrimage. It is in these circumstances, the petitioner has filed CrI.M.C before this Court Court with the prayer to modify Anx-A1 order dated 25.4.2015 passed by the court below to the extent it restricts permission to go 'Kailas Yathra' journey only for a period of one month and to modify the same by directing that sufficient

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time for undertaking the pilgrimage at least this year or next year be granted.

3. Smt.V.K.Hema, learned counsel for the petitioner, submits that the learned Sessions Judge in the impugned Anx-1 order proceeded as if the prayer of the petitioner in Crl.M.P.No.1853/2015 was only for permission to go abroad for a period of one month as can be seen from para 2 on page 6 of Anx-A1 order. That actual prayer made by the petitioner in Crl.M.P.No.1853/2015 was for permission to undertake 'Kailas Yathra' and to go abroad for that purpose for a period of two years and that he may be exempted from personal appearance before the court etc. To resolve this controversy the petitioner was requested to make available a copy of the Crl.M.P.No.1853/2015 and a copy of the same was made available for perusal of this Court and on a perusal of the said Crl.M.P.No.1853/2015 filed in S.C.No.134/2006, the prayer is as follows:

"So that it is most respectfully prayed that the Petitioner/Accused no.4 may be allowed to go abroad for a period of two years and he may be exempted from the personal appearance before this Hon'ble Court, and an order may be passed directing the Regional Passport Officer, Kozhikode to issue a new passport in the interest of justice."

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Therefore it is urged by the learned counsel for the petitioner that the court below has not considered all the relevant aspects in the matter and that the permission for getting passport and to travel abroad was granted for a limited period of one month on the presumption that the prayer in the Crl..M.P.No.1853/2015 was only to go abroad for a period of one month. Further, it is pointed out by the learned counsel for the petitioner that undertaking of 'Mount Kailas' journey is very difficult and it will take at least two years before the applicant is selected by the authority concerned and that visa/permission to travel to 'Mount Kailas' is required from Chinese Government as it is in their territorial control now. So the permission granted by the court limited to one month, will not sub-serve any purpose and it will defeat the very object sought by the prayer made before the court below. Accordingly, the petitioner submits that direction may be given to the passport authority to issue passport to the petitioner on the petitioner undertaking before the court below that he will actually travel abroad only for 'Kailas Yathra' after getting necessary permission from the court below and further that on receiving such passport the petitioner will make necessary application before the authorities concerned for getting permission/visa to undertake 'Kailas Yathra' and after getting such permission from the

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authorities concerned to undertake 'Kailas Yathra' journey, the petitioner will make necessary application before the competent authority to actually undertake 'Kailas Yathra'. It is pointing out these aspects that the application was submitted before the court below because minimum of 1-2 years may be required for getting permission for undertaking 'Kailas Yathra' and it appears that this year's time limit may be over and that the petitioner would again make an attempt for getting permission for 'Kailas Yathra' only next year.

4. Heard Smt.V.K.Hema learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent-State of Kerala.

5. On a perusal of the impugned Anx-A1 order, it is seen that the same is passed on the basic premise that the petitioner had sought permission to go abroad for 'Kailas Yathra' only for a period of one month whereas a perusal of Crl.M.P.No.1853/2015 filed before the court below would show that the prayer is for permission to go abroad for this purpose at least for a period of two years and the other prayers made earlier herein above. The court below has actually directed the Regional Passport Officer to issue new passport to the petitioner and has also given permission to the petitioner to go abroad for a period of one

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month from the date of obtaining passport. Since the permission granted was limited only to one month was on the mistaken premise that the request of the petitioner was also only for one month, the impugned order only to the extent it restricts permission for go abroad for a period of one month and the other consequential directions in condition No.3 of Anx-A1 will stand set aside. It is made clear that in respect of all other aspects to the extent which Anx-A1 order is in favour of the petitioner is not in any way interfered with. Crl.M.P.No.1853/2015 is remitted back to the court below only for the limited extent of reconsidering the matter as stated above and not for in any manner interfering with favourable directions given by the court below. Since the actual position as to whether the petitioner will receive permission for not only within the next one year also, this Court is not fixing any definite time limit for disposal of Crl.M.P.No.1853/2015 after the remand.

6. The petitioner may move another appropriate interim application in Crl.M.P.No.1853/2015 seeking interim permission for release of the passport as already directed in Anx-A1 and such prayer for interim release of the passport may be considered by the court below for the limited purpose of enabling the petitioner to seek permission

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from the competent authority for undertaking 'Kailas Yathra' as stated above. But the petitioner shall file an affidavit before the court below undertaking unconditionally that the said passport will be used by him only for the limited purpose of seeking permission before the competent authority of 'Kailas Yathra' that he will not travel abroad without the actual permission of the court below to be obtained later. It is for the court below to consider the interim application for release of passport for the purpose of seeking permission/visa for the 'Kailas Yathra' and take decision thereon. Thereafter, it is for the court below to consider all the other aspects of the matter in Crl.M.P.No.1835/2015 depending on the decision on the aforestated interim application. It is made clear that it is entirely within the province of the court below to re-consider all such matters as aforestated and decide in accordance with law.

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

ALEXANDER THOMAS,  
Judge.

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