

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Crl.MC.No. 3720 of 2015 ()

**CMP.NO. 1605/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,NEDUMANGAD
OR.NO.2/2015 OF PALODE FOREST RANGE**

PETITIONER/PETITIONER:

**NASEER, S/O.ABDUL SALAM,
KAVALAYOOR CRESCENT, MANAMPOOR,
VARKALA, THIRUVANANTHAPURAM.**

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENT/COUNTER PETITIONER:

**STATE OF KERALA,
THROUGH THE RANGE FOREST OFFICER, PALODE,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY SPL.GOVERNMENT PLEADER (FOREST) SRI. M.P. MADHAVANKUTTY

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 09-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

Crl.MC.No. 3720 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEX-A CERTIFIED COPY OF THE ORDER DATED 17/04/2015 IN CMP.1605/2015
IN O.R.2/2015 OF PALODE FOREST RANGE,OF THE JUDICIAL 1ST
CLASS MAGISTRATE FOR THE TRIAL OF FOREST
OFFENCES, NEDUMANGAD.**

RESPONDENT(S)' ANNEXURES:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

Crl.M.C.No.3720 Of 2015

Dated this the 9th day of July, 2015.

ORDER

The petitioner herein is the registered owner of Swift car bearing Reg.No.KL-16-H-6648, which was taken into custody in O.R.N0.2/2015 of Palode Forest Range, alleging that the said vehicle was involved in the forest offence under the Wild Life (Protection) Act, 1972, and the vehicle was produced before the Judicial First Class Magistrate Court, Nedumangad, for trial of the alleged offence under the above said Act, which was numbered as T.14/15 (1). The vehicle was then returned to the Forest Range Officials and it is parked at Palode Forest Range Office. The petitioner filed C.M.P.No.1605/2015 before the Judicial First Class Magistrate Court, Nedumangad under Sec.451 of the Cr.P.C seeking interim custody of the vehicle. Learned Magistrate by Anx-A order dated 17.4.2015 has allowed the said prayer for interim custody of the vehicle on condition to furnish bank guarantee for Rs.2 Lakhs and

Crl.M.C.No.3720 Of 2015

to execute bond for Rs.3 Lakhs with two solvent sureties each and shall produce the vehicle as and when required by the court. The petitioner contends that the condition imposed by the learned Magistrate to furnish bank guarantee for Rs. 2 Lakhs is harsh and is unnecessary when there is another condition to execute bond for Rs.3 Lakhs has already been incorporated. The prayer in this Crl.M.C is therefore for a direction from this Court to delete the said condition to furnish bank guarantee for Rs.2 Lakhs as imposed in Anx-A order.

2. Heard Sri.Shajin S.Hameed, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent-State of Kerala.

3. On a mere perusal of Anx-A order, it can be seen that the Investigating Officer filed a report stating that custody of the vehicle is not required for investigation in the case. The court below was also convinced that there is no need to keep the vehicle in the Forest Range Office premises as it may cause deterioration to the value of the car. It is also not in dispute that the value of the

Crl.M.C.No.3720 Of 2015

vehicle is Rs.4 Lakhs and not Rs.5 Lakhs. The only condition that is under challenge is the condition to furnish bank guarantee for Rs.2 Lakhs over and above the condition to execute bond for Rs.3 Lakhs with two solvent sureties for the like sum each. In the order dated 29.6.2015 in Crl.M.C.No.2945/2015, this Court considered the case for interim custody in respect of the forest crime involving offence under the provisions of Wildlife Protection Act, 1972, wherein this Court, considering the facts of that case, said that the condition to furnish security by way of immovable property for assessed value of the vehicle and subject to other conditions that would suffice for the purpose of interim custody of the vehicle. In the case Sunderbhai Ambalal Desai v. State of Gujarat reported in 2002 (10) SCC 283 = 2003 (2) KLT 1089 (SC), the Apex Court held that the powers under Sec.451 should be exercised expeditiously and judiciously and the court has to pass appropriate order immediately and articles are not to be kept for a long time at police station, in any case, for not more than 15 days to one month. Accordingly, the articles are not to be kept for a long time at police

Crl.M.C.No.3720 Of 2015

station in any case for more than 15 days to one month, etc. The wholesome perspective in respect of the above view taken by the Apex Court in Sunderbhai Ambalal Desai 's case (supra) is that the necessary detention of articles like vehicle, etc., will lead to deterioration as it is kept idle for a long time, which would benefit none, etc. In the light of the overall view taken by the learned Magistrate in Anx-A order, the learned Magistrate was convinced that there is no necessity to keep the vehicle idle and to cause its deterioration. Even the investigating agency is of the view that the vehicle is no longer required for investigation of the case. Therefore, on a overall pragmatic view of the matter, the impugned condition in Anx-A order to the effect that the petitioner shall furnish bank guarantee for Rs.2 Lakhs will stand deleted. Since the assessed value of the vehicle is Rs.4 Lkajs, the petitioner shall execute bond for Rs.4 Lakhs and shall furnish 2 solvent sureties for the like sum each to the satisfaction of the learned Magistrate. All other conditions, including the condition that the petitioner shall produce the vehicle before the court as and when required, shall

Crl.M.C.No.3720 Of 2015

remain unaltered. It is also ordered in the interest of justice that the attested photocopies of the RC Book and Insurance papers of the car should also be retained by the court below. Photograph/videograph, as the case may be, in respect of the above car may be taken from all necessary angles and the details of the identification marks of the vehicle like engine number and chassis number should also be noted and kept in the records of the court below. Anx-A order will stand modified as directed above.

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

ALEXANDER THOMAS,
Judge.

bkn/-