

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

Crl.MC.No. 3811 of 2015 ()

CMP. NO.3349/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
CHERTHALA.
CRIME NO. 341/2015 OF AROOR POLICE STATION, ALAPPUZHA DISTRICT.

PETITIONER/ACCUSED:

SANEESH K.T., AGED 22 YEARS,
S/O.THILAKAN, KALATHARA VEEDU,
ERAMALLOOR P.O., CHERTHALA TALUK.

BY ADV. SRI.B.PRAMOD.

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SRI.N. SURESH.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE-I: TRUE COPY OF THE REMAND APPLICATION SUBMITTED IN
CRIME NO.341/2015 OF AROOR POLICE STATION,
ALAPPUZHA DISTRICT.**

**ANNEXURE-II: TRUE COPY OF THE ORDER DATED 30.04.2015 IN
C.M.P.NO.3349/2015 ON THE FILE JUDICIAL FIRST CLASS
MAGISTRATE COURT- II, CHERTHALA.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3811 of 2015

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Dated this the 6th day of July, 2015

ORDER

The prayer in this Crl.M.C. is to delete impugned condition No.1 of Anx.II order rendered on 30.4.2015 by the Judicial First Class Magistrate's Court-II, Cherthala, on Criminal Miscellaneous Petition No.3349/2015 in Crime No.341/2015 of Aroor Police Station. Anx.II is the order, by which, the prayer of the petitioner for interim release of the motor cycle seized in connection with Crime No.341/2015 of Aroor Police Station, registered for offence punishable under Sec.20(b)(ii) of the NDPS Act was allowed. The conditions in Anx.II order read as follows:

“..... The vehicle shall be released to the interim custody of the petitioner on executing a bond for Rs. 60,000/- with two solvent sureties each for the like sum and subject to the following conditions.

1. The petitioner shall deposit a cash security of Rs.25,000/- which shall be released subject to the confiscation proceedings that may be initiated.
2. The petitioner shall produce the vehicle before court as and when required in the same condition.
3. The vehicle shall not be used for committing similar offence.
4. The vehicle shall not be transferred to any one else until further order.

5. The photographs of the vehicle shall be taken at the expense of the petitioner."

2. The gist of the allegations against the petitioner in respect of the above said crime is that on 17.2.2015, he was found in possession of 20 gms of ganja and accordingly, his vehicle (motor cycle) had been taken into custody by the Police on the allegation that at the time of the seizure of the contraband article, (20 gms of ganja) the vehicle (motor cycle) was seen near to him. The petitioner was released on bail and the court below allowed his plea for interim release of the vehicle as per Anx.II order, subject to the aforesaid conditions.

3. It is urged by the petitioner that keeping in view the allegations raised in the crime against the petitioner, the impugned condition No.1 of Anx.II to make cash security deposit of Rs.25,000/- as a pre-condition for release of the vehicle is unreasonable and unjust. Accordingly, it is prayed for deletion of condition No.1.

4. Heard Sri.B.Pramod, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala. The learned Public Prosecutor was earlier requested

to get specific instructions as to whether the petitioner was previously involved in any crimes relating to NDPS Act. The learned Public Prosecutor now submits, on instructions, that no other crimes are pending against the petitioner.

5. It is not in dispute that the factual allegation raised against the petitioner is that he was found in possession of 20 gms of ganja and the offence charged is one under Sec. 20(b)(ii) of the NDPS Act and in the light of the aforesaid small quantity of contraband, the maximum punishment imposable by way of prison imprisonment is only upto six months and the offence is bailable.

6. Taking into account the other conditions viz., condition Nos.2 to 5 of Anx.II order, this Court is inclined to accept the plea of the petitioner that condition No.1 to make cash security deposit of Rs.25,000/- is onerous and that in the light of the fact that the offence is only bailable and the quantity of the contraband comes within the category of "small quantity", as well as the submission of the learned Public Prosecutor that the petitioner is not involved in any other crimes, the impugned condition No.1 could be lifted. Accordingly, it is ordered in the interest of justice that impugned condition No.1 will stand deleted. It is made clear that all the other

conditions, viz. Condition Nos.2 to 5 of Anx.II, will remain unaltered. On the petitioner complying with condition Nos.2 to 5 in Anx.II order, the interim release of the vehicle may be effected to the petitioner without further delay, atleast within a period of ten days from the date of production of a certified copy of this order.

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

sd/+

Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge