

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CrI.MC.No. 4531 of 2015 ()

**CR.NO.OR 1/2004 OF NCB/RIU/THIRUVANANTHAPURAM
LP NO. 44/15 OF ADDL. SESSIONS COURT-V, THIRUVANANTHAPURAM**

PETITIONER/A3 :

**M.A.K. ASIF
IOB CHOICE HEIGHTS,
BAINS COMPOUND, NANTHENCODE
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.V.S.THOSHIN**

RESPONDENT/COMPLAINANT :

- 1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA-682 031.**
- 2. INTELLIGENCE OFFICER
NARCOTIC CONTROL BUREAU,
REGIONAL INTELLIGENCE UNIT
THIRUVANANTHAPURAM
REPRESENTED BY THE STANDING COUNSEL FOR NCB
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

**R1 & R2 BY ADV. SRI.MVS.NAMBOOTHIRY
BY ADV. P.P.JACOB**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20/08/2015, THE COURT ON 08-10-2015 PASSED THE FOLLOWING:**

Mn

...2/-

Crl.MC.No. 4531 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A- TRUE COPY OF THE JUDGMENT IN SC NO.584/04 DT. 10.12.07
 OF THE ADDL.SESIONS JUDGE, ADHOC NO.II,
 THIRUVANANTHAPURAM.**

**ANNEXURE B- THE CERTIFICATE ISSUED BY DR.M.NAZAR, SENIOR
 CONSULTANT, UROLOGIST & ANDOLOGIST, ADDITIONAL
 PROFESSOR & HEAD, DEPARTMENT OF GENITO URINARY
 SURGERY, GOVT. T.D.MEDICAL COLLEGE HOSPITAL,
 VANDANAM, ALAPPUZHA.**

**ANNEXURE C- THE ORDER OF THIS HONORABLE COURT IN
 CRL.M.C.NO.3726/15 DATED 23.6.15.**

**ANNEXURE D- THE FREE CARBON COPY OF THE ORDER IN
 CRL.M.P.NO.1480/15 DATED 4.7.2015.**

RESPONDENT(S)' ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ALEXANDER THOMAS, J.

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Crl.M.C.No.4531 of 2015

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Dated this the 8th day of October, 2015

ORDER

The petitioner herein is the accused No.3 (A3) in Crime No.OR.1/2004 of NCB/RIU/Thiruvananthapuram which has now given rise to LP No.44/2015 on the file of the Additional Sessions Court No-V, Thiruvananthapuram. There were three accused in the crime and subsequent to the Final Report/Charge Sheet, the case was committed to the Sessions Court as S.C.No.584/2004 on the file of the Court of Additional Sessions Judge Fast Track (Adhoc) No.II, Thiruvananthapuram. Since the petitioner who is accused No.3 was absconding, the case against him was split up and the trial as against the other two accused proceeded and which ended in Annexure-A judgment dated 10/12/2007 in S.C.No. 584/2004 rendered by the court of Additional Sessions Judge, Fast Track (Adhoc) No.II, Thiruvananthapuram. As per Annexure- A judgment, the Sessions Court convicted accused No.1 for the offence

punishable under Sec.21(a) of the NDPS Act and acquitted accused No.2 and accordingly sentenced A1 to undergo rigorous imprisonment for three months for the offence under Section 21(a) of the NDPS Act and that he is entitled to get set off in respect of the period of remand undergone by him in the prison against the sentence and that he is acquitted of the offence under Section 21 (b), 28 and 29 of the NDPS Act, in terms of the provisions contained under Sec.235(1) of the Code of Criminal Procedure. Further it was ordered in the said judgment that A2 is acquitted of the offence punishable under Sec.21(b), 28 and 29 of the NDPS Act under Sec. 235 (1) Cr.P.C. and A2 is set at liberty. As accused No.3 (the petitioner herein) was absconding, the case against him was ordered to be re-filed.

2. The case against A3 was re-filed as S.C.No.471/12 and was subsequently included in the long pending case list as LP No.44/2015.

3. Subsequently the petitioner approached this Court by filing Crl.M.C.No.3726/2015 that the prayer for direction to the court below to recall the L.P.warrant No.44/2015 in the aforesaid crime and to direct the court below to release the petitioner on bail in the

event if he surrender before the court below by exercising inherent powers of this court in the interest of justice etc. This court as per Annexure 'C' order dated 23/06/2015, finally disposed of Crl.M.C.No.3726/2015 with the following directions in paragraph No.3 thereof.

“3. Having regard to the totality of the facts and circumstances of this case, it is ordered in the interest of justice that in case the petitioner voluntarily surrenders before the Additional Sessions Court-V, Thiruvananthapuram (dealing L.P.No.44/2015 arising out of Cr.No.OR.1/2004 of NCB/RIU/Thiruvananthapuram) within two weeks from today and submit necessary application for recall of the warrant and application for grant of bail, then the court below concerned shall consider those applications on the same day itself, in accordance with law and taking into consideration the facts and circumstances of this case. It is further ordered that the petitioner shall give advance notice to the Prosecutor concerned attached to the court below concerned intimating the date and time of surrender before the court below, at least 24 hours prior to such proposed surrender. It is open to the petitioner to place for consideration Ext.C1 FSL report referred to Annexure-A judgment. The plea of the petitioner that the offence charged against him is only a bailable offence should also be examined and adverted to by the court below. It is further ordered in the interest of justice that until orders are passed by the court below concerned as directed above, further coercive steps against the petitioner may be kept in abeyance for the time being. It is made clear that in case the petitioner does not surrender before the court below concerned within the aforementioned period of two weeks from today as directed above, then the directions issued herein above shall automatically stand vacated. It is made clear that it is entirely within the province of the court below concerned to decide on the application for bail in accordance with law.

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

4. The Additional Sessions Court as per Annexure-D order dated 04/07/2015 on Crl.M.P.No.1480/2015 in L.P.No.44/2015 declined to grant the prayer of the petitioner herein and accordingly the petitioner was remanded.

5. The prayer in this Crl.M.C. is for necessary directions to the court below for speedy disposal of L.P.No.44/2015 in the aforestated crime pending on the file of the aforestated Additional Sessions Court concerned, by exercising the inherent powers of this Court in the interest of justice.

6. Heard Sri.Sasthamangalam S. Ajith Kumar, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the 1st respondent State of Kerala and the learned Standing Counsel appearing for the 2nd respondent, Narcotics Control Bureau.

7. In pursuance of the directions issued by this Court, the Sessions Court has submitted a report dated 21/07/2015 to the Registry of this Court, wherein inter alia it is pointed that four months time will be required to dispose of the Sessions Case arising out of L.P.No. 44/2015. There appears to be some confusion in the Sessions Case Number in so far as learned Additional Sessions

Judge has stated in Annexure-D order that the case as against A3 (petitioner herein) was re-filed as S.C.No.471/2012 which was subsequently included in long pending case list as L.P No.44/2015. However in the report dated 21/07/2015, the learned Additional Sessions Judge-V refers to Sessions Case as S.C.No.1043/2008 but it is also stated therein the offences mentioned is one under Sec.302 of the IPC. However in the heading of the said report it is shown that the Sessions Case in respect of L.P.No.44/2015 is S.C.No.878/2015. Even as per Annexure-D order, it is clearly stated that the case against the petitioner herein (A3) in the original Sessions Case, S.C.No.584/2004 is in respect of offences punishable under Sections 27A, 28 and 29 of the NDPS Act. Therefore obviously, the reference in the report dated 21/07/2015 of the learned Additional Sessions Judge-V that the Sessions Case is having S.C.No.1043/2008 and that it pertains to offences under Section 302 of the IPC etc. should obviously be a mistake. Still further it is not clear whether the information is correct in so far as the learned Additional Sessions Judge states in Annexure-D order that the refiled number of Sessions Case as against petitioner (A3) is S.C.No.471/2012, which led to L.P No.44/2015.

8. It is further stated in the said report of the Additional Sessions Judge-V that there are many other part heard old Sessions Cases pending in his court.

9. It is by now well established that the concept of fair trial also includes the right to early and expeditious completion of the trial process. Taking into account the fact that the trial as against the co-accused was finalised as early as in 10/12/2007 as evident from Annexure-A judgment and also taking into consideration the crucial aspect that the accused have prayed for expeditious completion of the trial, it is necessary in the interest of justice that sufficient directions are issued by this Court to ensure that the expeditious completion of the trial in this case. It shall be ensured that the Principal Sessions Judge, Thiruvananthapuram will ensure that the Sessions case arising out of L.P.No.44/2015 in which the petitioner herein is accused shall be made over to a learned Judge other than the present Judge so as to ensure that the trial process is completed without any further delay. All reasonable endeavours should be made to ensure that the trial in respect of Sessions Case arising out of L.P.No.44/2015 is completed at the earliest without any further delay and preferably within 3 months from the date of

production of certified copy of this order. The Registry will forward a certified copy of this order to the Principal Sessions Judge, Thiruvananthapuram for further necessary action.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL

