

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937**

**Crl.MC.No. 4870 of 2015**  
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**CMP 570/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, MUVATUPUZHA  
DATED 25-06-2015  
CRIME NO. 782/2015 OF MUVATTUPUZHA POLICE STATION , ERNAKULAM**  
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**PETITIONER(S)/CLAIM PETITIONER:**  
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**R.S. DEVELOPMENT AND CONSTRUCTIONS PVT. LTD.  
BRAHMAPURAM.P.O., KAKKANADU,  
REPRESENTED BY AGMS ANNADURAI, S/O.SAMUEL PANDIAN.**

**BY ADVS.SRI.PAUL K.VARGHESE  
SMT.A.A.GEETHA**

**RESPONDENT(S)/RESPONDENT & STATE:**  
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**STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN-682 031.**

**BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20-08-2015,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**PJ**

**Crl.MC.No. 4870 of 2015**  
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**APPENDIX**

**PETITIONER(S)' ANNEXURES**  
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**ANNEXURE I- A TRUE COPY OF THE ORDER IN CMP NO.570/15 OF THE JUDICIAL  
FIRST CLASS MAGISTRATE COURT, MUVATTUPUZHA DATED 11.5.15.**

**ANNEXURE II- A TRUE COPY OF THE JUDGMENT IN CRL.M.C NO.3027/15 OF THIS  
HONOURABLE COURT DATED 03.6.15.**

**ANNEXURE III- A CERTIFIED COPY OF THE ORDER IN CMP NO.570/15 DATED 25/6/15.**

**RESPONDENT(S)' ANNEXURES**  
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**NIL.**

**/ TRUE COPY /**

**P.S. TO JUDGE**

**PJ**

ALEXANDER THOMAS, J.

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Crl.M.C No.4870 of 2015

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Dated this the 20<sup>th</sup> day of August, 2015

ORDER

The petitioner seeks orders from this Court in this petition filed u/s 482 of Cr.P.C to delete or modify the impugned condition ordered on 25.6.2015 in Anx.III order insisting to produce bank guarantee for Rs.3.15 lakhs as a condition for interim release of the seized Bitumen in connection with Crime No.782/2015 of Muvattupuzha Police Station.

2. Heard Sri.Paul K. Varghese, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. Earlier, the impugned crime No.782/15 of Muvattupuzha Police Station has registered for offence u/s 3 and 7 of the Essential Commodities Act on the allegation that the vehicle in question was found carrying Bitumen, in violation of the provisions contained in the Essential Commodities Act and the orders framed thereunder etc. The petitioner is said to be the

contractor for whom the Bitumen was transported in the seized vehicle. Earlier the court below had refused the plea of the petitioner for grant of interim release of the seized Bitumen article on the ground that the Bitumen is notified as essential commodity in terms of the provisions contained in the Essential Commodities Act and the orders framed thereunder. The same was challenged before this Court in Crl.M.C No.3027 of 2015, wherein this Court as per Anx.II order rendered on 3.6.2015 had set aside the said rejection order passed by the court below and had remitted the matter for fresh consideration to decide whether Bitumen is an essential commodity would come within the provisions of the Essentials Commodities Act and the Rule framed thereunder and on other aspects of the matter as referred to in Anx.II. In compliance with the directions issued by this Court in Anx.II, the court below had passed Anx.IV order dated 12.6.2015, wherein it was held after hearing both sides that Bitumen is not essential commodity within the meaning of the Act and had ordered the grant of interim release of the seized Bitumen to the petitioner subject to the following conditions. Para 8 of Anx.IV reads as follows:

“i. on executing bond for Rs.50,000/- with 2 solvent sureties for like sum.

- ii. shall produce 2 photographs of the property.
- iii. shall produce the property as and when called for.
- iv. shall not use the property for committing any offence.”

4. Later the petitioner sought modification on condition No. iii (Para 8) of Anx.IV order and the court below as per the impugned Anx.III order dated 25.6.2015 had modified the said condition by insisting that the petitioner should produce bank guarantee for Rs. 3.15 lakhs as a condition for interim release of the article in question. This order is under challenge in this Crl.M.C.

4. On a consideration of the materials in record, that it has been held by the court below in Anx.IV order that Bitumen is not an essential commodity as concede in the Essential Commodities Act and the orders framed thereunder. Therefore to insist a condition that petitioner should necessarily to produce bank guarantee not less than Rs.3.15 lakhs (which is stated to be the assessed value of the Bitumen) appears to be onerous and disproportionate in respect of the facts and circumstances of this case. Therefore the impugned condition that the petitioner should produce bank guarantee for Rs.3.15 lakhs is modified and substituted with the direction that the petitioner shall execute a bond for Rs.3.15 lakhs and shall furnish two solvent sureties for the like sum each to the

satisfaction of the court below concerned. All other conditions imposed by the court below will remain unaltered. On the petitioner fulfilling these conditions, subject to the modification made above, the seized article shall be released to the petitioner. It is pointed out that the seized Bitumen article has already been released to the petitioner after the petitioner had executed the bank guarantee. In the light of this order, the petitioner will be at liberty to revoke the bank guarantee and comply with the modified condition as directed above. Needless to say that the interim release of the seized article will be subject to the final orders that may be passed regarding the final custody in relation to such articles, at the time of the conclusion of the trial.

sd/-

sab

ALEXANDER THOMAS, JUDGE