

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

CrI.MC.No. 5340 of 2015 ()

**CMP 2624/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, MALAPPURAM
CRIME NO. 493/2015 OF KONDOTTY POLICE STATION, MALAPPURAM**

PETITIONER/PETITIONER :

**ANWAR SADIQ K.,
AGED 28 YEARS, S/O.EZHUVANTHUMKADAN MUHAMMED,
PULIKKALKANDI HOUSE, PATHANAPURAM, KEEZHUPARAMBA P.O.,
AREACODE, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.SAMSUDIN
SRI.JITHIN LUKOSE**

RESPONDENT/RESPONDENT :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM - 682 031.
(CRIME NO.493/2015 OF KONDOTTY POLICE STATION
MALAPPURAM DISTRICT).**

BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 18-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 5340 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE A1. CERTIFIED COPY OF THE ORDER DATED 17.06.2015 IN CMP
 NO.2624/2015 ON THE FILES OF JFCM COURT, MALAPPURAM.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ALEXANDER THOMAS, J.

Crl.M.C. No. 5340 of 2015

Dated this the 18th day of August, 2015

ORDER

The prayer in this Crl. M.C. is for an order from this Court to modify the impugned condition no.3 of Annexure A1 order dated 17.06.2015 of CMP No. 2624/2015 in Cr.No.493/2015 of Kondotty Police station whereby the prayer of the petitioner for interim release of the seized vehicle has been allowed subject to the conditions stated therein.

2. Heard Sri. P.Samsudin learned counsel for the petitioner and Sri. Rajesh Vijayan, learned public prosecutor for the State of Kerala.

3. The matter issued is covered by the decision of this Court in Ashraf v. Station House Officer, Kasargode Police Station and Others [2015(2) KHC 236] in paragraph 13. This Court has held that the view taken by the full bench of this Court in Shan v. State of Kerala [2010(3) KLT 413] in the matter of grant of interim

custody of vehicles seized in connection with crime registered under the Kerala Protection of River Banks and Regulation of Removal of Sand Act would still govern the field in spite of notwithstanding the amendments made to the said Act after the pronouncement of said full bench judgment. Accordingly it was held by this Court in Ashraf' case (supra), based on the legal position laid down in full bench decision of this Court in Shan's case (supra) that the interim custody of vehicle seized in connection with such crime could be considered for release only subject to satisfaction of 30% of the value of the vehicle and on furnishing security of the balance amount as specified.

4. Therefore the condition nos. 2 and 3 appear broadly to be in consonance with the parameters laid down by this Court in the aforestated reported ruling. However this Court has held in Ashraf's case (supra) that the 70% component should be on furnishing security as specified. Therefore, it is not as if that the bank guarantee for the said 70% component should necessarily be the sole criteria in all cases. So long as the security so ordered to be furnished is adequate to protect of the interest of the State so as

to cover the 70% component then such conditions could be specified by the Court dealing with the request under Section 451 of the Code of Criminal Procedure.

5. Accordingly in condition no. 3 which stipulates that “petitioners shall produce bank guarantee for Rs.52,000/-” shall stand modified and substituted by the condition that “petitioner shall produce immovable property security for value of Rs.52,000/-.”

6. The learned counsel for the petitioner submits that the petitioner may be permitted to furnish immovable property of the securities by producing certified copies of the securities and by also producing affidavits of unconditional undertaking by such sureties that they will not encumber, transfer or alienate the said property, without obtaining prior permission by the court below concerned. In the light of this submissions it is made clear that petitioner will be open to the petitioner to approach the court below with such request and it is for the court below to consider whether such security is to the satisfaction of the court below concerned.

With these observations and directions the impugned condition no.3 will stand modified accordingly and all other

conditions in Annexure A1 order will remain unaltered.

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

Sd/-
ALEXANDER THOMAS
JUDGE

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