

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.MC.No.4900 of 2014

**CMP NO.2316/2004 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
PERAMBRA.
OR NO.1/2013 OF PERUVANNAMOOZHI FOREST RANGE OFFICE,KOZHIKODE.**

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PETITIONER/PETITIONER:

**N.V.ABDUL KAREEM,S/O.MUHAMMED HAJI,
AGED 47 YEARS,PARTNER,MALABAR JEWELLERY,
MALABAR HILLS,K.P.CHANDRAN ROAD,PUTHIYARA P.O
KOZHIKODE DISTRICT.**

BY ADV.SRI.CIBI THOMAS

RESPONDENT'S/COMPLAINANT/STATE:

- 1. FOREST RANGE OFFICER,PERUVANNAMUZHI,
KOZHIKODE DISTRICT-683 528.**
- 2. STATE OF KERALA,REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM-682 031.**

BY SPECIAL GOVT.PLEADER SRI.M.P.MADHAVANKUTTY,

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

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APPENDIX

PETITIONER'S ANNEXURES:

**ANX.I. TRUE COPY OF THE GUN LICENCE NO.2399/KDE BEARING NO.128893
OF THE PETITIONER.**

**ANX.II. TRUE COPY OF THE ORDER IN CMP 2316/04 OF THE JUDICIAL 1ST CLASS
MAGISTRATE I PERAMBRA DATED 23-6-14.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

pk

ALEXANDER THOMAS, J.

Crl.M.C.No.4900 Of 2014

Dated this the 27th day of May, 2015.

ORDER

Petitioner herein is the 6th accused in Occurrence Report, O.R.No.1/2013 of Peruvannamuzhi Forest Range registered for offences punishable under Secs. 2(2), 2(16), 2(36), 2(37), 9, 39 and 50 of the Wildlife Protection Act, 1972 and Sec.27(1)(e)(iv)(iii) of the Kerala Forest Act, 1961. The case of the prosecution case is that the accused had shot and killed a bison (Bosgaures) from the forest area of Kakkayam Forest and forest officials prepared mahazar on 15.4.2013 and booked an offence as O.R.No.1/2013 as stated above. There are altogether seven accused persons. The petitioner herein is the 6th accused. Preliminary Report (Form I) and mahazar have been submitted before the Judicial First Class Magistrate Court-I, Perambra. The seized properties involved in this case are; (1) SBBL Bore Gun licence no.2399/KDE, bearing No.128893, one air gun and connected firing materials, (2) cooked meat and utensils, knife, the portion of fleshy skin of the animal etc.

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According to the prosecution, the air gun in question was allegedly detected in the estate bungalow owned by the petitioner herein and the seized gun bearing licence No.128893 is exclusively under the possession of the petitioner and that the air gun relates to his brother etc. That the above guns are used for hunting and the same is used for committing the offence. The seized articles have been submitted before the court below concerned. Petitioner submitted Crl.M.P.No.2316/2014 in O.R.No.1/2013 before the above said Magistrate Court praying that interim custody of both the guns may be given to him as those are highly necessary for his personal safety and protection etc. The court below considered the plea of the petitioner as well as the objections of the prosecution in the above Crl.M.P. The prosecutor opposed the said prayer specifically on the basis of the plea that pursuant to the report received from the Forensic Scientific Lab concerned, it is seen that signs of firing was detected on the barrels. In this view of the matter the court below has taken the considered view that the above said two guns cannot be released to the petitioner. At this

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stage, it was specifically held that the two barrels constitute vital piece of evidence which was produced by the prosecution at the time of trial of the offence and therefore the plea of the petitioner for interim custody of the two guns was rejected vide Annexure-II order. It is this order rendered by the Magistrate Court concerned on 23.6.2014 in Crl.M.P.No.2316/2014 in O.R.No.1/2013 which is challenged in this Crl.M.C.

2. Heard Sri.Cibi Thomas, learned counsel for the petitioner and Sri.M.P.Madhavankutty, learned Special Government Pleader (Forest) appearing for the respondents.

3. The learned counsel for the petitioner specifically pointed out that the petitioner needs his gun for his personal safety and protection and that this Court may set aside the impugned order and grant interim custody of the guns after imposing any stringent conditions that may be deemed necessary by this Court.

4. The plea of the petitioner was opposed by the learned Special Government Pleader (Forest) appearing for the respondents-State on the ground that the two guns are vital piece

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of evidence and that due process of law demand that those guns may remain in the custody of the court below concerned, as otherwise sanctity of the entire process which regulate such seizure of vital piece of evidence like the guns will be affected. The Special Government Pleader would also urge that as amongst the apparent rival claims between the sanctity of the judicial process in a prosecution and the plea that the guns are required for personal protection of the accused, the former would certainly prevail.

5. Having given anxious consideration of the facts and circumstances, I am of the considered opinion that there is no illegality and impropriety in the considered view taken by the court below by passing the impugned order. As per the consistent version of the prosecution, two guns are involved in the above said offence in question. Therefore, it is not legal or proper to allow the plea of the petitioner at this stage of the matter.

6. Faced with the situation, Sri.Cibi Thomas, learned counsel for the petitioner, submitted that after the seizure of the guns, the validity period of its licence expired and this Court may

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give necessary directions to the respondents to give custody of the guns to the petitioner for the purpose of getting it renewed from the District Magistrate concerned as per the provisions of the Arms Act. The averments and contentions raised in the Cr.M.P filed before the court below are not in any way connected with the present plea now raised by the petitioner. If the petitioner has any such grievance which are justiciable in accordance with law, it is for the petitioner to proceed to the work out his remedy strictly in accordance with law. As already stated herein above, no interference is called for in this Crl.M.C.

Accordingly, the Crl.M.C finally stands dismissed.

ALEXANDER THOMAS,
Judge.

bkn/-