

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE V.G.ARUN

Friday,the 26th day of March 2021/5th Chaithra, 1943CrI.M.Appl/1/2021 IN CrI.MC/1892/2021

CMP No.2228/2020 of the ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O),ERNAKULAM,

O.R.No.7 of 2020 of Customs Preventive Commissionerate, Cochin.

PETITIONERS/PETITIONERS:

1. SHRI. YUSUFF ALI M.A.,,AGED 64 YEARS
S/O M.V. ABDUL KHADER, LULU GROUP INDIA PVT LTD, 34/1000, NH-47, EDAPPALLY, ERNAKULAM-682024. REPRESENTED BY HIS POWER OF ATTORNEY HOLDER MR. PEETHAMBARAN V., AGED 54 YEARS, S/O RAMAN NAIR, RESIDING AT VADASSERY HOUSE, KATTOOR P.O, TRICHUR DISTICT, PIN-680702.
2. MR. FAHAZ ASHRAF,,AGED 25 YEARS
S/O ABDUL KADER ASHARAF ALI, EMKE MANSION NO.1, NATTIKA P.O, THRISSUR, PIN-680566.

RESPONDENTS:

1. THE SUPERINTENDENT OF CUSTOMS,
CUSTOMS (PREVENTIVE) COMMISSIONERATE, COCHIN-682031.
2. T.P.NANDAKUMAR,,AGED 58 YEARS
CHIEF EDITOR, CRIME MAGAZINE, PUTHIYARA ROAD, CALICUT-4.

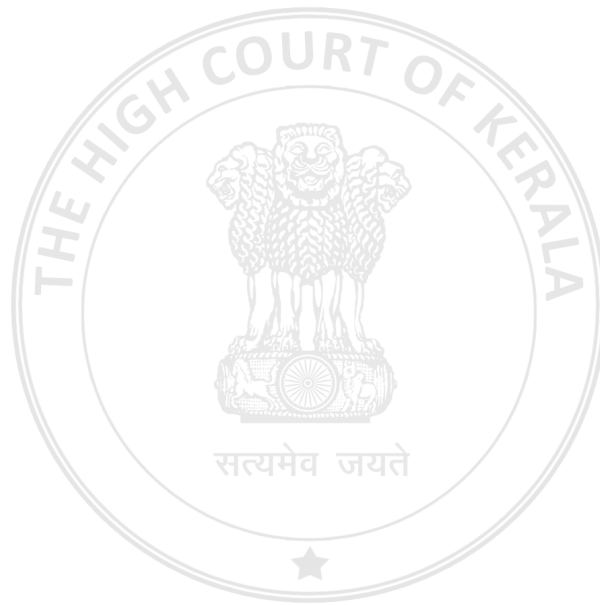
Petition praying that in the circumstances stated therein the High Court be pleased to stay the operation and implementation and all further proceedings in pursuance of Annexure A order in CMP.No.2228 of 2020 in O.R.No.7 of 2020 of Customs Preventive Commissionerate, Cochin pending disposal of Criminal Miscellaneous Case.

This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S. S.SREEKUMAR (SR.) & SHRI.HARIKRISHNAN S., Advocates for the petitioners and the PUBLIC PROSECUTOR for the 1st respondent, and of Mr. MANU TOM, Advocate for the 2nd respondent, the court passed the following.

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ANNEXURE A: TRUE COPY OF ORDER DATED 19/03/2021 PASSED BY THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE (ECONOMIC OFFENCES) ERNAKULAM IN CMP.NO.2228 OF 2020 IN OR.NO. 7 OF 2020 OF CUSTOMS PREVENTIVE COMMISSIONERATE, COCHIN.

ANNEXURE C: TRUE COPY OF COMMUNICATION SENT BY THE CONSULATE GENERAL OF THE UNITED ARAB EMIRATES, KERALA, TRIVANDRUM TO THE MANAGING DIRECTOR, COCHIN INTERNATIONAL AIRPORT DATED 16/06/2020.



V.G.ARUN, J.

**Crl.M.Appl.No.1/2021 in Crl.M.C.No. 1852 of 2021
and
Crl.M.Appl.No.1/2021 in Crl.M.C.No. 1892 of 2021**

Dated this the 26th day of March, 2021

O R D E R

For information purpose only

The common grievance of the petitioners is against the order of the Additional Chief Judicial Magistrate Court(EO), Enakulam allowing C.M.P.No.2228 of 2020 filed in O.R.No.7 of 2020 of the Customs Preventive Commissionerate, Cochin. The petition was filed by one T.P.Nandakumar, alleging that the averments in B.A.No.4186 of 2020 filed by the 3rd accused in O.R.No.7 of 2020 indicated the involvement of persons named Fahaz Ashraf and M.A.Yosuf Ali in the alleged smuggling of gold through diplomatic channel, being investigated in O.R.No.7 of 2020. It was alleged that the statement of the 3rd accused shows that an attempt was made to re-export the smuggled gold with the help of the persons named above, but, those persons being highly influential, no investigation is being conducted regarding their role in the illegal activities. By the impugned order, the investigating officer is directed to investigate about the veracity of the statement of the 3rd accused as to the preparation and forwarding of e-mail for re-exportation of consignment with

subject 'NOC to Fahaz Ashraf C/o.M.A.Yosuf Ali'. Aggrieved, the Customs Department has filed Crl.M.C.No.1852 of 2021 and the named persons (M.A.Yosuf Ali and Fahaz Ashraf) have filed Crl.M.C.No.1892 of 2021.

2. Learned Senior Counsel appearing for the petitioners in Crl.M.C.No.1892 of 2021 contended that the impugned order is patently illegal, inasmuch as the communication, which is highlighted for the purpose of implicating the petitioners, has nothing to do with the alleged smuggling of gold through diplomatic channel.

3. In support of the contention, attention was drawn to Annexure B, copy of B.A.No.4186 of 2020 filed by the 3rd accused in O.R.No.7 of 2020. Paragraph 2 in the bail application, on which particular emphasis is laid, reads as under;

“2. The Matter being so, the Consul General of UAE Thiruvananthapuram again sought her assistance in various administrative matters as she was having experience in Consulate works. Due to the sudden outbreak of COVID 19 in India, the present Consulate General had flew back to UAE in the month of April 2020. Accordingly, Mr.Rashid Khamis Al Sheimeili was appointed as acting charge of the Consulate General and he became the admin attached to the Office of the Consulate General of UAE in Thiruvananthapuram,

Keala. During all these times petitioner was worked with the Consulate "Work on Request Basis" and obeyed the direction of His Excellency Consulate General of UAE. In order show the bonafide of the petitioner, the petitioner is producing some of the email communication prepared and sent as per the instructions of Consulate of UAE. The Email communications prepared and send on account of some educative programs against the spreading of COVID 19 through the petitioner is produced herewith Annexure A1. Another Email communication send by the petitioner dated 16th June 2020 addressed to the Managing Director, Cochin International Airport under the instructions of Consulate General Of UAE is produced herewith as Annexurte A-2."

It is contended that from a reading of the above paragraph it is clear that the attempt of the 3rd accused was to prove that her role as the Executive Secretary at the Office of the Consulate General of the United Arab Emirates required her to send communications as directed by the Consul General. It is further contended that the communication dated 16.6.2020 mentioned in paragraph 2 above (Annexure-C) is a letter of no objection given by the Consul General to the Managing Director, Cochin International Airport Limited for the 2nd petitioner's travel to UAE. It is submitted that Annexure C was issued in the wake of the air travel restriction imposed by the UAE Gopvernment.

4. As per the averments in Annexure B Bail Application, the Consul General of UAE had received a mail from the Office of the Assistant Commissioner on 1.7.2020 requesting for his presence at the Cargo Complex at Thiruvananthapuram Airport for verification of the diplomatic cargo, at 11 a.m on 3.7.2020. Accordingly the Consul General went to the Cargo Complex and identified the cargo and thereafter, directed the 3rd accused to prepare a mail seeking re-export of the cargo. That letter is produced along with bail application as Annexure A4.

5. According to the learned Senior Counsel, a stray communication produced along with her bail application by the 3rd accused, as directed by the Consul General, has been misused and misinterpreted to make it appear that the petitioners were also party to the illegal activities at the Consulate.

6. Learned Standing Counsel for the Customs Department supported the arguments of the learned Senior Counsel and submitted that a thorough and threadbare investigation is being conducted in O.R.No.7 of 2020 and interference in the investigation at the behest of strangers would only hamper its progress.

7. Having heard the Senior Counsel and the learned Standing Counsel for the Customs Department, I find prima facie merit in the contention that Annexure-C letter dated 16.6.2020 (produced in Crl.M.C.No.1892/2021) has no nexus to the gold smuggling that is being investigated. Going by its content, the purpose of that letter was to inform the Cochin International Airport Authorities of the UAE Government's no objection in Fahaz Ashraf travelling to UAE. The impugned order does not mention about any other material linking the petitioners in Crl.M.C.No.1892 of 2021 with the request for re-export of the smuggled gold.

Hence there shall be an interim stay of operation of the directions contained in the order dated 19.3.2021 in C.M.P.No.2228 of 2020 in O.R.No.7 of 2020 of the Additional Chief Judicial Magistrate Court (EO), Ernakulam for a period of two months.

Post on 17.5.2021.

Sd/-

V.G.ARUN, JUDGE

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