

Crl.MC.No.10742/24

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"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 18TH DAY OF FEBRUARY 2025 / 29TH MAGHA, 1946

CRL.MC NO. 10742 OF 2024

CRIME NO.138/2024 OF Thalapuzha Police Station, Wayanad

AGAINST THE ORDER/JUDGMENT DATED IN MC NO.686 OF 2024

OF SUB DIVISIONAL MAGISTRATE, PERINTHALMANNA

PETITIONER:

SHARMINA A,
AGED 24 YEARS
D/O SIVASANKARAN ALPPATTA,ALPATTA HOUSE,
ALPATTAKULAMBA,KODUR PO, KODUR , KODUR-MALABAR,
MALAPPURAM,KERALA, PIN - 676504

BY ADVS.
RIZWANA A.A.
AQIB SOHAIL P.S.

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RESPONDENTS:

- 1 SUB DIVISIONAL MAGISTRATE,
MINI CIVIL STATION, PERINTHALMANNA, PIN - 679322
- 2 STATION HOUSE OFFICER,
KOLATHUR POLICE STATION, KOLATHUR, KERALA, PIN -
679338
- 3 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031

OTHER PRESENT:

SMT. PUSHPALATHA. M.K, SR.PP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
13.02.2025, THE COURT ON 18.02.2025 PASSED THE FOLLOWING:

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V.G.ARUN, J

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Crl.M.C.No.10742 of 2024

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Dated this the 18th day of February, 2025

ORDER

The challenge in this Crl.M.C is against Annexure A1 preliminary order under Section 130 of the BNSS issued by the Sub Divisional Magistrate, Perinthalmanna requiring the petitioner to show cause why she should not be ordered to execute a bond for Rs.50,000/- with sureties to keep peace for a period of one year. The basis for issuing the order is Annexure A2 report of the Station House Officer, Kolathur Police Station stating that, by repeatedly indulging in illegal activities, petitioner is likely to cause breach of peace and disturb public tranquillity in the locality.



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2. Learned counsel for the petitioner submitted that, among the crimes referred in Annexure A2 report, the allegation in Crime No.138 of 2024 registered at Thalapuzha Police Station is that the petitioner, along with 12 other individuals, held a procession to commemorate the death anniversary of a lady named Kavitha, who was associated with a Maoist group. The allegation in Crime No.123 of 2024 registered at the Nilambur Police Station is that on 22.01.2024, between 18:50 and 19:10 hrs, petitioner and other accused belonging to Purogamana Yuvajana Prasthanam organised a demonstration, disrupted traffic and shouted the slogan "In the land of Babari, Justice is only Masjid". The 3rd crime, registered as per Annexure A5, pertains to a protest by the petitioner and 7 others against an NIA raid in Pandikkad. According to the learned counsel, voicing one's opinion and expressing dissent is every citizen's fundamental right and petitioner's liberty cannot be curtailed, by reason of her participation in demonstrations



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and voicing her opinion. It is contended that, for invoking the power under Section 126 and compelling a person to execute bond under Section 130 of BNSS, the Sub Divisional Magistrate should reach a *prima facie* conclusion that the activities of that person is posing imminent threat to the peace and tranquillity in the locality. In support of the contention, reliance is placed on the decisions in **Kuldip Singh Chawla and Others v. The State of Bihar** [1988 Supreme (Pat) 107], **Ashish Khanna v. State of Bihar Through S.D.M.** [2007 Supreme (Pat) 1130] and **Bijay Sankar Sen and Ors. v. State of Assam and Others** [2021 Supreme (Gau) 415].

3. According to the learned Public Prosecutor, repeated registration of crimes against the petitioner for holding demonstrations and disrupting traffic shows that she is an imminent threat to peace and tranquillity. Hence, petitioner has to be restrained, by requiring her to execute the bond under Section 130 of BNSS.



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4. The contentions advanced give rise to the question whether petitioner's liberty can be curtailed, by requiring her to execute bond for keeping peace for participating in demonstrations to protest against the policies of the Government. While answering this question, it has to be borne in mind that Article 19 of the Constitution guarantees to every citizen freedom of speech and expression, right to assemble peaceably without arms and to form associations or unions. Indeed, those rights are subject to reasonable restrictions and cannot be exercised contrary to public order, decency, morality or against the sovereignty, integrity and security of the State.

5. A perusal of the impugned order shows that, other than relying on Annexure A2 report, the Sub Divisional Magistrate has not formed an independent opinion that the activities of the petitioner are an imminent threat to the peace and tranquillity in the locality. As held by the Apex Court in **Madhu Limaye v. Sub-Divisional Magistrate Monghyr And others** [1970 3



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SCC 746], even though an order directing execution of bond for preventing breach of peace may have the appearance of an administrative order, in reality it is judicial in character. Therefore, reasons are to be stated in the order passed by the Magistrate. This Court in **Santhosh M.V. and Others v. State of Kerala and Others** [2014 KHC 522] has also held that, while initiating proceedings under Section 107 Cr.P.C. (126 BNSS), Magistrate must pass a preliminary order, stating nature of information received and the relevant factors which influenced him to form an opinion that the concerned person is likely to cause imminent breach of peace, making it essential to take preventive action against that person.

6. The liberty of a citizen being sacrosanct, cannot be curtailed in a casual manner, by referring to crimes relating to public demonstrations. Mere participation in demonstrations, holding of banners or shouting slogans, cannot be perceived as activities in violation of the reasonable restrictions mentioned



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in Article 19. Moreover, mere mentioning of the crimes pending against a person will not satisfy the requirement of giving reasons and the apprehended breach of peace must be imminent. The conduct or wrongful acts, which are projected as the reason for issuing the order must have occurred recently and must be relatable to the apprehension of likelihood of breach of peace. In the case at hand, the impugned order does not even indicate the factors that had prompted the Magistrate to form an opinion that, unless prevented, activities of the petitioner will result in breach of peace and disturb public tranquillity.

For the aforementioned reasons, the Crl.M.C is allowed. Annexure A1 order and all further proceedings thereon are quashed.

sd/-

V.G.ARUN, JUDGE

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APPENDIX OF CRL.MC 10742/2024

PETITIONER ANNEXURES

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| Annexure A1 | A TRUE COPY OF THE ORDER FROM
RESPONDENT NO. 1 DATED NOVEMBER 2024 IN
MC 686/2024 |
| Annexure A2 | A TRUE COPY OF THE AFFIDAVIT SUBMITTED
BY RESPONDENT NO. 2 IN MC 686/2024 |
| Annexure A3 | A TRUE COPY OF THE FIR FOR CRIME NUMBER
138/2024 FROM THALAPUZHA POLICE STATION
DATED 08/03/2024 |
| Annexure A4 | A TRUE COPY OF THE FIR FOR CRIME NUMBER
123/2024 FROM NILAMBUR POLICE STATION
DATED 22/01/2024 |
| Annexure A5 | A TRUE COPY OF THE FIR FOR CRIME NUMBER
141/2024 FROM PANDIKKAD POLICE STATION |