
(2012) 08 KL CK 0123
In the High Court Of Kerala
Case No : Criminal MC. No. 850 of 2012 (A)

State of Kerala

APPELLANT

Vs

Swami Amrutha Chithanya @ Santoh Madhavan

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0123

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : T. Asaf Ali, Director General of Prosecution, for the Appellant; C.P. Udayabhanu, for the Respondent

Judgement

S.S. Satheesachandran, J.—State has filed this petition challenging Annexure A-II order passed by the learned Chief Judicial Magistrate, Ernakulam, allowing an application moved by the respondent who is the accused in Crime No. 897/2008 of Central Police Station, Ernakulam, for release of some articles seized in connection during the investigation of the aforesaid crime on execution of a bond for Rs. 4,00,000/- (Rupees Four Lakhs Only) with two solvent sureties. The main thrust of challenge raised by the learned Director General of Prosecution for assailing Annexure A-II order is that a proper opportunity was not provided to the State and the Investigating Officer was not heard before passing of Annexure A-II order. Going through Annexure A-II order it is seen on Annexure A-I application moved by the respondent/accused one line order has been passed directing him to furnish security as aforesaid. Though the order would reflect that the prosecuting agency was also heard, evidently, with reference to the materials covered by the case, the learned Magistrate has not examined the question of release of the articles on interim custody. The learned Magistrate is directed to take note of the guidelines given in *Sunderbhai Ambalal Desai V. State of Gujarat* (2003 (2) KLT 1089 SC) in the release of articles seized in connection with the crime on interim custody, pending trial. Adherence to and following of such guidelines may be essential since very many items seized by the Police may have

some significance or relevance at the stage of trial. So much so, when articles are to be released on interim custody, whatever be the conditions imposed, question whether mahazars prepared over the same noting particulars of the articles or their photographs taken would suffice the requirement for the purpose of evidence in the case, necessarily, has to be looked into by the court while passing order for release of the articles on interim custody. Setting aside Annexure A-II order the Magistrate is directed to consider Annexure A-I application afresh and dispose it, after affording an opportunity to the prosecuting agency to raise its objections, if any, as expeditiously, as possible, at any rate, within a period of four weeks from the date of receipt/production of a copy of this order. Needless to point out the observations made above, and also, the guidelines given in the reported decision referred to, shall be taken note of the Magistrate for passing appropriate orders.