

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I,
PERUMBAVOOR**

Present: Sri. Anish Babu M.B, Judicial Magistrate of First Class

Friday the 20th day of December, 2024/ 29th Margaseersha 1946

**CMP No. 4705/2024 IN CRIME NO. 1880/2024 OF PERUMBAVOOR
POLICE STATION**

Petitioner : Abhijith Mohanan, S/o Mohanan, 16/404,
Anjanamchira, Nandanakizhaya, Muthalamada,
Govindapuram, Palakkad.

(By Adv. Nandagopan M.C)

Respondent/Complainant: State represented by the Sub Inspector of
Police, Perumbavoor P.S (Cr.No. 1880/2024)

(By. Dr. Geetha K.K, A.P.P. JFCM-I)

ORDER

This petition is filed by the petitioner u/sec. 497 of BNSS for getting interim custody of Volkswagen Polo car (Flash read colour) bearing registration No.KL-66-C-3003 involved in crime No. 1880/2024 of Perumbavoor police Station. The alleged offence is punishable under Section 336(3), 340(2) of BNS. The above mentioned vehicle was taken into custody by the Perumbavoor police in connection with the above crime and produced before the court vide T. 680/2024.

2. The petitioner submits the following contentions. Petitioner is the sole and exclusive owner of Volkswagen Polo car (Flash read colour) bearing registration No.KL-66-C-3003. The said vehicle was taken into custody by the Perumbavoor police in connection with the above mentioned crime. The learned counsel for the petitioner submitted that if the vehicle is kept exposed to sun and rain, it will be ruined. The learned counsel for the petitioner also submitted that the

petitioner is ready to abide by any conditions for the interim release of the vehicle, otherwise the petitioner will be put to irreparable loss and injury. Hence the petitioner prayed for the interim custody of the vehicle.

3. Notice given to APP and reports were also called for from the Investigating Officer. The Investigating Officer filed report stating that the court can pass appropriate order in the case.

4. Heard both sides.

5. The points that arise for determination are that:-

1. Whether this application can be allowed?
2. If so, on what terms?

6. **Point Nos.1 and 2:-** For the sake of convenience, both the points are considered together. Prosecution case is that the accused person in the crime No. 1880/24 of Perumbavoor P.S has committed the offences punishable u/s. 336(3), 340(2) of BNS. Learned counsel for the petitioner submitted that petitioner herein is the sole R.C. owner of the vehicle. The learned counsel for the petitioner further contended that the vehicle is not required for further investigation.

7. The prosecution has raised no objection in releasing the vehicle to the petitioner. It is to be noted here that there is no case for the prosecution that detention of the vehicle is necessary for any scientific examinations.

8. The petitioner has produced copy of the sale letter dated 03.10.2024 and print out of the virtual RC of the above vehicle. On perusal of copy of above documents it is revealed that the petitioner is the owner of Volkswagen Polo car (Flash read colour) bearing registration No.KL-66-C-3003 . So, I am of the firm opinion that prima facie the registered owner i.e. the petitioner herein is entitled to get the possession of the vehicle and there is nothing wrong with releasing the vehicle in favour of its registered owner subject to the production of original document pertaining to the vehicle. The other apprehensions of the prosecution can be addressed by imposing appropriate conditions.

9. At this juncture, it is profitable to consider the scope of Section 497 of BNSS. An order passed under Section 497 does not decide anything finally. It is made during the progress of the inquiry or trial for a specific purpose i.e. interim custody of the property produced before the Court. **Hon'ble High Court of Delhi in Anisa Begum vs Masoom Ali, reported as 1986 Cri.LJ 503**, has pointed out that while granting interim custody the court will take into consideration the person who is prima facie entitled to its possession.

10. It was further held that even if the person entrusted with interim custody is the owner, his possession or custody during the period of entrustment is only as representative of the Court and not in his independent right. The entrustment or custody will not invest him with any preferential right to ownership or even possession. In the eyes of law, property is in the possession of the court as held by the Hon'ble High Court of Kerala in **V. Parakashan v. K P. Pankajakishan**, reported as 1985 Cri. Lj 951 and also in **Sajidevan v. State of Kerala**, reported as 2009 (4) KHC 882.

11. Moreover, if the vehicle is kept idle in the department's custody, the same would be exposed to sun and rain. It is likely to be ruined. Evidently, the petitioner herein is the owner of the Vehicle. He is likely to keep the vehicle in good condition. So interim custody of the vehicle can be granted to the petitioner during the pendency of the case on stringent conditions.

12. In the case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported as AIR 2003 SC 638, the Hon'ble Apex Court of India had issued certain directions for granting interim custody of valuable articles, vehicles and currency notes kept in the court. Hon'ble Apex Court of India further stated that articles shall not be kept for a long time in custody. **The Hon'ble Supreme Court of India in Multani Hanifbhai Kalubhai v. State of Gujarat & Anr.**, reported as (2013) 3 SCC 240, had also expressed that it is not advisable to keep the seized vehicle in the police station in open condition which is prone to

natural decay on account of weather conditions for a long period. The dictum laid down by the Honourable Supreme Court of India is squarely applicable to the facts and circumstances of the case.

13. In light of the above discussion, it is clear that the application can be allowed on conditions. Thus the points are answered in favour of the petitioner.

14. At this juncture, it is pertinent to note that as per the copy of vehicle particulars of the vehicle, the year of manufacturing of the vehicle is 2020, it will be proper to execute a bond equivalent to the present value of the vehicle. In the result, the petition is allowed and interim custody of the vehicle, Volkswagen Polo car (Flash read colour) bearing registration No.KL-66-C-3003 is given to the petitioner on the following conditions:-

1. The petitioner shall execute a bond for Rs.10/- lakhs – (Rupees Ten Lakhs only) with two solvent sureties for the like amount;
2. Petitioner shall produce latest vehicle particulars of the vehicle and other available documents of the vehicle before this court for verification and shall produce true copies of the documents;
3. Three photographs of the vehicle taken from three different angles and countersigned by the petitioner and attested by the Investigating Officer shall be submitted to the court;
4. Petitioner shall file an affidavit stating that he will not dispute the identity of the vehicle shown in the photographs produced by the petitioner;
5. The vehicle shall not be alienated, altered/modified or disposed of and the vehicle shall be produced before the court and appropriate authority as and when required;
6. The vehicle shall not be used for offence of any kind;

7. Detailed Mahazar of the above vehicle shall be prepared before giving its interim custody to the petitioner;
8. The vehicle shall be released to the petitioner only after affixing number plates exhibiting original registration No. 66-C-3003 and produce the photographs of the same to the satisfaction of the SHO concerned; and
9. In the case of breach of any of the conditions made herein above, the bond executed will be forfeited.

Pronounced by me in Open Court this the 20th day of December, 2024.

sd/-

Judicial Magistrate of 1st Class-I,

Perumbavoor.