

**IN THE COURT OF THE PRINCIPAL DISTRICT &
SESSIONS JUDGE AND SPECIAL JUDGE (NDPS),
AT : DAVANAGERE.**

Present

Smt. RAJESHWARI N. HEGDE., B.Com.,LL.B.,(Spl.),
Principal District & Sessions Judge
& Special Judge (NDPS), Davanagere.

Dated this the 4th day of August, 2022

SPECIAL CASE (NDPS) NO. 7/2020

Complainant:- State represented by PSI
Channagiri Police Station,

(By Sri K.Kenchappa, PP,
Davanagere)

-VERSUS-

Accused:- Shafir Khan & Others.

Applicant:- Rathnamma W/o Kempaiah,
Aged about 45 years,
R/o Hattinagara, Vidyanagara,
Shivamogga.

(By Sri D.P.Basavaraj, Advocate)

ORDER

1. The Learned Advocate for the applicant who is the RC owner of the seized vehicle bearing Reg.No.KA-51/P-1822 i.e., Innova Car under P.F.No.141/2020 dated 10.9.2020 has filed the application under Sec.457 of

Cr.P.C., praying for release of the same to the interim custody of the applicant.

2. In the application, the learned counsel for the applicant stated that applicant is the RC owner of the seized vehicle. It is further stated that Channagiri Police have seized the said vehicle for involvement of the vehicle in the alleged offence. The police have mentioned the seizure of the vehicle in P.F.No.141/2020 dated 10.9.2020. It is further stated that there is likelihood of the said vehicle being damaged if it is kept idle in the open premises of the police station for sun light, rain and air. It is further stated that applicant is ready and willing to abide by any conditions that may be imposed by this court; applicant is ready to furnish surety to the satisfaction of the court and applicant will not change the colour of the vehicle and will not sell the vehicle and ready to execute the indemnity bond. Hence, prayed for allowing the application.

3. The learned Public Prosecutor has filed objections to the above application and contended that the IO has completed the investigation and submitted the charge sheet before this Court. The IO has seized vehicle bearing Reg.No.KA-51/P-1822 while illegally transporting the ganja by the accused persons by drawing panchanama in the presence of panchas and

which was used for commission of alleged offences. If the vehicle is released in favour of the applicant, she may alter its identity, she may change its colour and exchange the parts of the vehicle and also she may use the said vehicle for commission of similar offences. Hence, he prayed for dismissal of the same.

4. After hearing the arguments of both sides, my learned predecessor in office had passed the order vide dated 9.3.2021 by rejecting the application filed by the applicant for release of seized Car. Being aggrieved by the said order, the applicant has preferred a criminal petition U/s.482 of Cr.P.C. before Hon'ble High Court of Karnataka, Bengaluru in Criminal Petition No.3571/2021 and passed an order by allowing the criminal petition and quashed the order passed by this Court and remanded back to consider the application filed U/S.457 Cr.P.C on its merits.

5. The learned counsel for the applicant has filed copy of order passed by Hon'ble High Court of Karnataka, Bengaluru in Criminal Petition No.3571/2021 dated 17.6.2022.

6. Heard the arguments afresh on both sides on the application filed U/S.457 Cr.P.C.

7. Perused the records.

8. The following points do arise for my consideration;

“Whether the applicant is entitled for release of the seized vehicle?”

9. My findings on the above point is in the affirmative, for the following;

R E A S O N S

10. The learned Counsel for applicant-Rathnamma has filed this application U/S.457 of Cr.P.C., for release of the seized vehicle under P.F.No.141/2020 dated 10.9.2020 i.e., Innova Car bearing Reg.No.KA-51/P-1822 for her interim custody.

11. The present case is registered against the accused persons alleging the offence punishable U/S.8(c), 20(b) (ii)(B) of the NDPS Act. Thus, the provisions of NDPS Act are applicable to the present case and not the general provisions of Code of Criminal Procedure.

12. The learned Counsel for applicant has produced the original smart card of Certificate of Registration pertaining to the seized vehicle bearing Reg.No.KA-51/P-1822 and Private Car package policy schedule of the vehicle. They prima-facie reveal that the applicant is the registered owner of the seized vehicle i.e., Innova Car bearing Reg.No.KA-51/P-1822.

13. On perusal of the case records particularly the seizure panchanama, it prima-facie reveals that the complainant police have seized 5Kg., 250grams of ganja

from the seized vehicle wherein illegally transporting the ganja worth about ₹1,26,000/- by accused No.1 to 5 and also they seized Innova Car bearing Reg.No.KA-51/P-1822 which was used for commission of offence. The learned counsel for the applicant submitted that the Investigating Officer has completed the investigation and submitted the chargesheet before the Court. Further, the accused No.1 to 5 were also released on bail by this Court on the basis of the order passed by the Hon'ble High Court of Karnataka, Bengaluru in Criminal Petition No.6127/2020 dated 20.11.2020. Now, the applicant filed this application praying for interim custody of the vehicle i.e., Innova Car bearing Reg.No.KA-51/P-1822 stating that she is the registered owner of the same.

14. On perusal of the records it reveals that earlier this Court has passed an order on this application by rejecting the same on 9.3.2021. On being aggrieved by the said order, the applicant has preferred a Criminal petition before Hon'ble High Court of Karnataka, Bengaluru in Criminal Petition No.3571/2021 and the same is allowed on 17.6.2022 and quashed the order passed by this court on 9.3.2021 and remanded back to consider the said application on its merits.

15. After hearing the argument of both sides afresh on the application filed U/S.457 Cr.P.C., this court has

observed that the investigating officer has completed the investigation and filed the charge sheet before the Court. The material objects are already recovered from the possession of the accused persons and the same is notified in the P.F.memo. The accused No.1 to 5 were also released on bail.

16. On perusal of the documents, it is not in dispute that this applicant is the RC owner of the seized vehicle i.e., Innova Car bearing Reg.No.KA-51/P-1822. Though, it is true that the seized vehicle is said to be used for commission of the offence under section NDPS Act, it is not a ground to reject the application. The applicant has undertaken that she will abide by all the terms and conditions to be imposed by the Court. Keeping the vehicle in police custody will not serve any purpose and the vehicle if exposed to air and light, it will be deteriorated and cannot be used and thereby the applicant will be put to inconvenience. On the other hand, if the application is allowed, no harm or injury would be caused to the prosecution, except the apprehension that the applicant may not produce the vehicle as and when called by the Court or Investigating Officer which can be resolved by imposing stringent conditions. Therefore, in view of the above discussion, this Court is of the opinion that the applicant is entitled for release of the seized vehicle.

Accordingly, the above point for consideration is answered in affirmative, and proceed to pass the following;

O R D E R

Application filed by the Applicant U/S.457 of Cr.P.C., is allowed.

Seized Innova Car bearing Reg.No.KA-51/P-1822 is ordered to be released to the interim custody of the applicant- Rathnamma on her executing indemnity bond in a sum of Rs. 15,00,000/- (Rupees Fifteen Lakh only) with two sureties for the like sum subject to the following conditions;

1. She shall not change the identity of the above said vehicle till the disposal of the case.

2. The applicant shall not change the colour, internal spare parts, nature or identity of the seized vehicle and shall not transfer or alienate the seized vehicle till disposal of the case.

3. She shall produce this vehicle before the Investigating agency and before the court as and when directed to do so.

4. She shall keep the vehicle in tact and in 'good repair'.

5. The Investigating Officer is directed to draw panchanama and to take photographs of the seized vehicle from all angles and applicant is directed to co-operate with the Investigating Officer for drawing up of panchanama and taking photographs and then only release the seized vehicle for interim custody of the applicant.

After executing the indemnity bond as above, intimate the concerned police to release the seized vehicle to the interim custody of the applicant after taking photographs as directed above.

(Typed to my dictation by the Judgment writer, after his typing, corrected, signed and then pronounced by me in the open Court on this the 4th day of August, 2022).

(RAJESHWARI N. HEGDE)
Principal District & Sessions Judge,
& Special Judge (NDPS), Davanagere.