

In the Court of Principal District and Sessions Judge,
D.K., Mangaluru.

Present
Sri Muralidhara Pai B., B. Com., LL.B.,
Principal District and Sessions Judge,
D.K., Mangaluru.

Dated this the 5th day of April, 2022.

Special Case No.23/2022

Applicant: Mr. Sheikh Ibrahim,
aged 66 years,
S/o Mr. Sheikh Ali,
R/at Sheikh Ali Cottage, Majal,
Uppala, Kasaragod – 671322.
Kerala.

(By Sri K.P.A. Shukoor, Advocate)

Versus

Respondent: The State,
Represented by learned Public
Prosecutor, D.K. Mangaluru.

(By Sri Raju Poojary,
Public Prosecutor)

ORDER

The Applicant namely Mr. Sheikh Ibrahim has maintained this application under Sections 451 and 457 of Criminal Procedure Code (in short Cr.P.C.) praying to order for release of Maruti Swift Car bearing No. KL-14-Q-4030 to his interim custody, in the interest of justice.

2. The prosecution has filed objection to this application along with report of Investigating Officer.

3. Heard learned Counsel for Applicant and learned Public Prosecutor.

4. The following points would arise for the consideration of this Court:

1) Whether the Applicant has made out valid ground to allow the application?

2) What Order?

5. The findings of this Court on the above points are under:

Point No.1: In the Negative,

Point No.2: As per final order.

REASONS

6. **Point No.1:** This is a case wherein Ullala Police have filed a charge sheet against one Fazal P.M. and another for the offences punishable under Section 8(c) and 21(b) of NDPS Act with an accusation that on 27.03.2021 at about 9.20 a.m. the accused were found with a scooter and a car in front of Village Bar in Tachani of Talapady Village and that on search it was found that they were in possession of contraband for the purpose of its sale. It is stated that during the search the jurisdictional police have found 1.69 grams of MDMA in the dickey of scooter bearing No. KL-14-Z-6808 with Accused No.1 and 0.85 grams of MDMA in the dashboard of Car bearing No. KL-14-Q-4030 with Accused No.2.

7. The Applicant herein has maintained the present application praying for release of car in question to his interim custody on the ground that he is the registered owner of the said vehicle and that he is ready to abide by any reasonable condition imposed by the Court for its release to his interim custody. In support of the application the Applicant has produced a copy of

certificate of registration pertaining to the car in question to prima-facie show he is the registered owner of the vehicle.

8. The prosecution has opposed the present application mainly on the ground that the same is not maintainable before this Court in view of judgment in *Zubaida Vs State of Intelligence Officer, Narcotics Control Bureau (NCB), Bengaluru Zonal Unit* [Criminal Petition No.4792/2020 DD: 24.11.2020 by Hon'ble High Court of Karnataka] and the Applicant has to approach concerned authority for necessary relief.

9. In Zubaida's case referred supra Hon'ble High Court of Karnataka relying on the decision of Hon'ble Apex Court of India in *Union of India Vs Mohanlal and another* [(2016) 3 Supreme Court Cases 379] has categorically held that the disposal of any seized items in connection with offences under NDPS Act is to be made by DDC and in the said circumstances the magistrate or the Special Court could not have similar power to exercise in respect of seized item and for grant of custody, interim or otherwise.

10. In Zoom Car India Private Limited's case Hon'ble High Court of Karnataka allowed the petition and directed the trial court to release seized vehicle to the interim custody of the Petitioner therein subject to certain condition. Thereafter, the prosecution moved an application before Hon'ble High Court of Karnataka in the very same proceedings praying to recall its Order dated 12.11.2020 on the ground that the arguments were not canvased with reference to Section 52A of NDPS Act and the notification issued by Central Government in the year 2015. Hon'ble High Court of Karnataka considered the said application on merits and dismissed the application vide its Order dated 05.01.2021 and directed to place the matter before Hon'ble Chief Justice with an observation that the question raised by the prosecution has to be decided by the larger bench on account of divergent view of co-ordinate bench in Zubaida's case. In said order Hon'ble High Court of Karnataka has expressed its view that DDC has no independent power to entertain any application for release of the seized vehicle to the interim custody and the power conferred on DDC is subject to the order passed by the magistrate under

Section 52A or Section 60(3) and Section 63 of NDPS Act.

11. In Thippeswamy, Basappa's case, decided on 01.02.2021, Hon'ble High Court of Karnataka has considered the decisions rendered in Zubaida's case and Zoom Car India Private Limited's case and opined that it is appropriate to refer the matter to the larger bench to consider the question as to who is the competent authority to order for release of seized articles and vehicles under NDPS Act. The above narrated facts go to show that the question relating to the competence of the magistrate or the Special Court to entertain an application for release of the seized items including the vehicles used for the crime is not yet finally decided and matter is pending consideration before the larger bench of Hon'ble High Court of Karnataka. In the above circumstances, this Court holds that at this stage it is to be held that the Applicant has not made out valid ground to entertain the present application. Accordingly, Point No.1 is answered in the *Negative*.

12. **Point No.2:** In the result, this Court proceeds to pass the following:

ORDER

The application filed under Sections 451 and 457 of Criminal Procedure Code is dismissed.

(Typed by the Judgment Writer to the dictation, corrected and then pronounced in the Open Court on this the 5th day of April, 2022.)

(Muralidhara Pai B.)
Prl. District & Sessions Judge,
D.K., Mangaluru.