

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

Present:- **Sri Ravindra M. Joshi**, M.A., LL.B. (Spl.),
Principal District and Sessions Judge,
D.K., Mangaluru.

Dated: - This the **21st day of July, 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,
by Ullala Police Station,
Represented by Public Prosecutor,
Mangaluru.

(By Public Prosecutor)

ORDER

This application is filed under Sections 451 and 457 of Criminal Procedure Code (Cr.P.C.) praying for release of Maruti Swift Car bearing Reg. No. KL-14-Q-4030 for interim custody, by the Applicant.

2. The learned Public Prosecutor filed objections to the application along with report of Investigating Officer.

3. Heard on both sides.

4. Perused the contents of the application, objection and other materials. The points that arisen for consideration of this Court are:

1) Whether the Applicant has made out justifiable and reasonable grounds for allowing the application?

2) What Order?

5. The above points are answered for the reasons, findings given in the foregoing paragraphs as:

Point No.1 : In the Affirmative,

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 Public Prosecutor opposed the application contending that the accused of the case with an intention to sell contraband of MDMA powder illegally possessed and kept in the Scooter bearing Reg. No. KL-14-Z-6808 and Maruti Swift Car bearing Reg. No. KL-14-Q-4030. The police on the credible information recovered the contraband from the accused and seized the vehicles. The vehicles seized in the case are required for identification purpose during the trial. If the vehicle is ordered to be released for interim custody, there are chances of changing the colour, model of the vehicle and also alienate it. Further, there are chances of use of the vehicle for committing the similar offences. The vehicle seized under NDPS Act is liable to be confiscated. Therefore, it is not proper to allow the application and prayed for dismissing the application.

9. On considering the materials on record it reveals that the Applicant is R.C. Holder of Maruti Swift Car bearing Reg. No. KL-14-Q-4030. The vehicle is seized under the provisions of NDPS Act. As per the Section 60(1) of NDPS Act whenever any offence

punishable under the Act has been committed the narcotic drug, psychotropic substance, controlled substance, opium, poppy, cocaine plant, cannabis plant, material apparatus and utensils in respect of which or by any means of which such offence has been committed shall be liable to confiscation. Section 60(3) of NDPS Act any animals or conveyance used in carrying any narcotic drug, psychotropic substance, controlled substance, or any article liable to be confiscation under Sub-Section (1) or (2) shall be liable to confiscation unless the owner of the animal or conveyance proves that it was so used without the knowledge or convenience of the owner himself, his agent, if any and the person in charge of the animal or conveyance and that each of them had taken all reasonable precautions of such use.

10. In **Criminal Petition No.3571/2021** and other connected cases dated 07.05.2022 by Hon'ble High Court of Karnataka it is observed that expeditious and judicious, exercise of power under Section 451 of Cr.P.C. with respect to disposal of articles kept in police custody pending trial. Further, the Hon'ble Supreme Court of India in **(2002) 10 Supreme Court Case 283**

laid down the procedure for custody and disposal of valuable articles and currency notes, vehicles, seized liquor and narcotic drugs. Further, in Criminal Petition No.3571/2021 the Division Bench of Hon'ble High Court of Karnataka held that the magistrate or special court is conferred with power/jurisdiction to consider application for interim custody of conveyance/vehicle under the provisions of Section 451 and 457 of Cr.P.C. in cases arising out of the provisions of NDPS Act. Further, it is held that the Drug Disposal Committee (DDC) constituted under Notification dated 16.01.2015 issued by Central Government under the provisions of Section 52A of NDPS Act has no authority to consider the application for release of interim custody of the conveyance/vehicle.

11. In the present case also the Car bearing Reg. No. KL-14-Q-4030 belongs to the Applicant has been seized and case has been registered for the offence under the provisions of NDPS Act. In view of decision of the Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka it is clear that the seized articles need not be kept in police custody and for pending trial. The seized articles are to be released to the person

entitled. The Hon'ble High Court of Karnataka held that the Special Court dealing with the offences under NDPS Act is having jurisdiction to consider the application filed under Section 451 and 457 of Cr.P.C. for release of the vehicles seized. The seized car is needed and required for identification purpose during trial. It doesn't mean that seized vehicle shall not be given for interim custody. The vehicle can be given for interim custody by making necessary arrangement for securing the same during the trial either by physical production or photographs of the vehicle as observed by Hon'ble Supreme Court of India. The Petitioner/Applicant is required the vehicle for day-to-day use. If the vehicle is kept idle open to rain, sun light, there chances of damaging, rusting of machinery. Therefore, on considering all these aspects, this Court finds that the Applicant is entitled for interim custody of the vehicle. Therefore, Point No.1 is answered in the *Affirmative*.

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 allowed.

Maruti Swift Car bearing Reg. No. KL-14-Q-4030 is hereby ordered to release to the interim custody of the Applicant, subject to following conditions:

- 1) The Applicant shall produce the vehicle in question before the Court or the investigating agency as the case may be, as and when directed to do so.
- 2) The Applicant shall not alter, modify or change the design, colour or features of the vehicle in any manner except carrying out necessary repairs required for maintenance of the vehicle.
- 3) The Applicant shall not alienate or encumber the vehicle in question till disposal of the case without prior permission of the Court.
- 4) The Applicant shall execute an indemnity bond for Rs.4,00,000/- along with a surety for the like-sum, undertaking to abide by above conditions.
- 5) In default, the Applicant and surety are jointly and severally liable to deposit the bond amount before the Court within the time stipulated by the Court.

- 6) The Investigating Officer is directed to hand over the vehicle to the interim custody of the Applicant after taking sufficient number of the photos of the vehicle from all angles at the cost of the Applicant and by drawing mahazar to the said effect.
- 7) The Investigating Officer is further directed to submit such photographs and the mahazar to the Court at the earliest.

(Dictated to the Judgment Writer, transcribed by her, the transcript corrected and signed by me and then pronounced in the open court on this the 21st day of July, 2022.)

(Ravindra M. Joshi)
Principal District & Sessions Judge,
D.K., Mangaluru.