

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 **7th day of April, 2025.**

Spl.C.No.180/2024

Complainant/ Respondent: The State of Karnataka,
by Excise Mangaluru South Range-1,
represented by Public Prosecutor,
D.K., Mangaluru.

(By Public Prosecutor)

Versus

Applicant/
Petitioner: Pranam P. Kotian,
S/o Prem Salian,
aged about 27 years,
R/at #21PLV79/2, Hoige Bazar,
Port Land, Attavar Village,
Pandeshwar Post,
Mangaluru.

(Smt. Anjani Kishore, Advocate)

ORDER

The application is filed under Sections 451 and 457 of Criminal Procedure Code praying for release of Yamaha Motor Cycle bearing reg. No. KA-02-X-1197 seized in Crime 40/2023, for interim custody of 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, First Information Report, complaint, objections, charge sheet 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:** On 14.04.2023 the Excise Inspector, Mangaluru Sub-Division received information that the accused Pranam Kotian S/o Prem Kotian was selling ganja near Goodshedde. Accordingly, by entering the information in concerned record proceeded on Hoige Bazar towards State Bank and catch hold the accused near Rosario School gate. However, the accused by stopping the motor cycle managed to ran away. Thereafter, by preparing search

warrant have searched the laptop bag found 6 plastic covers containing hybrid ganja in 4 packets, charas in one packet and small LSD stamp paper and PAN card. On weighing the contraband 16.5 gram, 15 gram, 15 gram, 15 gram, 60 gram of ganja and 8.8 gram charas. The Excise Inspector seized them along with motor cycle bearing reg. No. KA-02-X-1197 under mahazar. On the basis of raid cum seizure mahazar FIR has been registered in Crime No.40/2022-23 for the offences under Section 8(c), 20(b)(ii)(A), 21(a), 25 of NDPS Act. After completion of the investigation, the Investigating officer submitted charge sheet for the offences under Section 8(c), 20(b)(ii)(A), 22, 25 of NDPS Act.

7. The applicant contended that he is owner of Motor Cycle bearing reg. No. KA-02-X-1197. The police have seized the vehicle in connection with above case.

The vehicle is necessary for his day-today activities. The vehicle seized is not required for investigation purpose. If the vehicle is kept idle, it will be rendered useless. The applicant undertakes to produce the vehicle as and when the Court directs. The applicant is ready to abide by the condition that may be imposed for release of the vehicle.

8. The Public Prosecutor filed objections contending that the vehicle has been used for committing the offence punishable under the provisions of NDPS Act. The vehicle is required for identification purpose. Further, vehicle seized is liable for confiscation. If the vehicle is ordered to be given for interim custody there are chances of change, alter, the colour, model of the vehicle. The vehicle seized is required for identification purpose. Therefore, it is not

proper to release the vehicle for interim custody and prayed for rejecting the same.

9. On considering the materials on record it reveals that the Motor Cycle bearing reg. No. KA-02-X-1197 belongs to the applicant. The vehicle has been seized during course of raid and reported to the Court. The offence alleged are Section 8(c), 20(b)(ii)(A), 22, 25 of NDPS Act.

10. 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.

11. In the decision the Hon'ble Supreme Court of India in **(2002) 10 Supreme Court Case 283** 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 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 Sections 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.

12. In the present case also the motor cycle 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 entitle. 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 Sections 451 and 457 of Cr.P.C. for release of the vehicles seized. The seized vehicle 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 vehicle is required

by the applicant for his day-today activities. If the vehicle is kept idle open to rain, sun light, there chances of damaging, rusting of machinery. The vehicle of the applicant can be secured for the purpose of identification during trial by imposing conditions. 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*.

13. **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 by the applicant is allowed.

Motor Cycle bearing reg. No. KA-02-X-1197 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.50,000/- along with a surety for the like-sum, undertaking to abide by above conditions.
- 5) 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.

- 6) The Investigating Officer is further directed to submit such photographs and the mahazar to the Court at the earliest.

(Typed by the Stenographer Grade-I to the dictation, the transcript corrected and signed by me and then pronounced in the open court on this the 7th day of April, 2025.)

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