

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 November, 2022.**

Special Case No.22/2022

Applicant: Mr. Hassainar,
S/o H. Hussain,
aged about 49 years,
R/at 2-14/10, Pilikur House,
K.C. Nagar, Thalapady Post,
Mangaluru Taluk (Now Ullal Taluk)
D.K. District - 575023.

(By Sri Rajesh K.G., Advocate)

Versus

Respondent: The State,
by Ullala Police Station,
represented by learned Public
Prosecutor. D.K., 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 Motor Cycle bearing Reg. No. KA-19-EJ-6126 for interim custody, by the Petitioner/Applicant - Hassainar.

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 Petitioner 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:** The SHO Ullala Police Station registered Crime No.50/2021 for the offence punishable under Section 8(c), 20(b)(ii)(B) of NDPS Act against accused Mohammed Imtiyaz and Rameez Raj on the basis of report submitted by Police Inspector. On 01.03.2021 the Police Inspector along with his staff was on patrolling duty in the evening while he was proceeding near Kotekar Beeri Junction, received information about carrying contraband ganja on a motor cycle towards Palaha School Junction. Immediately he proceeded and found the motor cycle at informed place along with two persons carrying plastic bundle. Thereafter, he took them to his custody and on inquiry he came to know that the accused was carrying the plastic bundle contains 1 kg 150 gram ganja in the motor cycle illegally. Thereafter, he seized the contraband, mobile, vehicle and arrested the accused. After completion of investigation has submitted charge sheet against the accused for the said offences.

7. The petitioner contended that he is R.C. Holder of Motor Cycle bearing Reg. No. KA-19-EJ-6126. The police officials have seized the vehicle in this case and reported to the Court. It is contended that the vehicle is very much necessary to the accused for day-to-day work. If the vehicle is kept idle, it will subject to natural wear and tear and rendered useless. The accused undertakes to produce the vehicle as and when the Court directs. The accused 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 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 Applicant is R.C. Holder of Motor Cycle bearing Reg. No. KA-19-EJ-6126. 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 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.

11. In the present case also the Motor cycle bearing Reg. No. KA-19-EJ-6126 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 motor cycle 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 Applicant is required the vehicle for day-today 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 accused 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.

Motor Cycle bearing Reg. No. KA-19-EJ-6126 is hereby ordered to release to the interim custody of the Petitioner 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) 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 accused 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.

(Typed by the Judgment Writer to the dictation, the transcript corrected and signed by me and then pronounced in the open court on this the 21st day of November, 2022.)

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