

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 **30th day of October, 2024.**

Spl.C. No.104/2023

Complainant: State of Karnataka,
by Konaje Police Station,
represented by Public Prosecutor,
D.K., Mangaluru.

(By Public Prosecutor)

Versus

Applicant/
Petitioner: Mrs. Ayshath Thahira,
W/o Kareem A.,
aged about 39 years,
R/at Paivalike Village and Post,
Kasaragod District, Kerala State.
Represented by her GPA Holder,
Mr. Usman Ansar,
S/o Mahammad,
aged about 29 years,

R/at D. No.3-6, Panila,
Pajeer Village and Post,
Ullal, D.K. - 574199.

(Smt. Arathi S., Advocate)

ORDER

The application is filed under Sections 451 and 457 of Criminal Procedure Code praying for release of Maruti Swift VDI BSIV Car bearing reg. No. KL-14-X-3942 seized in PF No.65/2021 (Sl.No.3) in Crime No.88/2021, 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 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 03.06.2021 the PSI, Konaje Police Station on credible information about transportation of contraband MDMA by 3 persons in a

car bearing Reg. No. MH-14-GD-0561 from Gundya towards Natekal, conducted raid near Ganesh Mahal and arrested accused Abdul Manaf, Mohammed Muzambil, Ahammed Masook and seized 170 gram of MDMA, mobiles, vehicle. On the basis of raid report, the SHO registered FIR in Crime No.88/2021 for the offence under Sec. 8(c), 21(c) of NDPS Act against 3 accused. During investigation the police arrested accused Mohammad Rameez S/o Mohammad and at his instance seized car bearing Reg. No. KL-14-X-3942 and reported to the court through PF No.65/2021.

7. The applicant contended that he is R.C. holder of Maruti Swift VDI BSIV car bearing reg. No. KL-14-X-3942. The police have seized the vehicle in connection with above case. The vehicle is necessary for

his day-to-day 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 car bearing reg. No. KL-14-X-3942 belongs to the applicant. The vehicle has been seized at the time of investigation and reported to the Court through PF No.65/2021. The offence alleged are Section 8(c), 21(c) 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 car 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-to-day 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.

Car bearing reg. No. KL-14-X-3942 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.5,00,000/- 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-II to the dictation, the transcript corrected and signed by me and then pronounced in the open court on this the 30th day of October, 2024.)

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