

**IN THE COURT OF THE PRL. DISTRICT &
SESSIONS JUDGE, DHARWAD.**

DATED THIS THE 7th DAY OF DECEMBER, 2021.

PRESENT:

SRI. UMESH.M.ADIGA, B.Com. LL.B. (SPL),
PRL. DIST. & SESSIONS JUDGE, DHARWAD.

Spl.NDPS CC.No.7/2020

COMPLAINANT:

The state of Karnataka
by Hubballi sub urban P.S.

(By PP Dharwad)

V/s

ACCUSED:

- 1 Maruti S/o Kallappa Haranasikari,
Age 25 years Occ: Shepherd waits,
R/o Timmapur Tq & Dt: Gadag

(By Sri.T.R.Patil., Adv.,)

APPLICANT

Maruti S/o Kallappa Haranasikari,
Age 25 years Occ: Shepherd waits,
R/o Timmapur Tq & Dt: Gadag

**ORDERS ON APPLICATION FILED U/S 451 OF
CR.P.C**

Advocate for accused No.1 filed application U/s 451 of Cr.P.C., praying to grant interim custody of the vehicle seized in the above said case and reported to this court in PF No.116/2020.

2. The learned public prosecutor filed objections to the said application.

3. I have heard the arguments learned advocate for applicant and learned PP.

4. The following points emerges for my determination:

(1) Whether the applicant/accused No.1 is entitled for interim custody of the vehicle seized and reported to this court in PF No.116/2020?

(2) What order?

5. My findings on the above points are as follows:

Point No.1 : In the negative.

Point No.2 : As per final order,
for the following:

R E A S O N S

6. **Point No.1:-** The Sub-urban police station Hubballi on 2-9-2020, on the credible information raided on the accused No.1 and 2, seized narcotic drugs and motor cycle bearing Reg.No. KA-26/ED-2911, wherein both accused No.1 and 2 came to the spot along with narcotic drugs. The investigating officer seized narcotic drugs and motor-cycle bearing Reg.No.KA-26/ED-2911 along with other articles under mahazar and reported the seizure of said vehicle in PF No.116/2020 dated 2-9-2020.

7. The said vehicle at present kept in the police station. Accused No.1 is R.C., holder of the said vehicle, praying for interim custody of the vehicle on the ground that said vehicle is required for him, to do his day today work and if it is kept in the police station or Court, then it may become useless by lapse of time. If interim custody is given to him, he will maintain and produce the said vehicle whenever so directed by the

court. He will undertake to abide by the conditions that may be imposed by the court. With these reasons he prayed to allow the application. The copy of R.C., is also produced along with application.

8. The learned public prosecutor contends that said vehicle is required during trial of the case. If it is released in favour of the applicant/accused No.1, he may not produce the same before the court. He may change its identity. In that event, hardship will be caused to the case of the prosecution and prays to reject the application.

9. The learned public prosecutor submits that in view of judgment passed by Hon'ble High Court of Karnataka in the case of Zubaida Vs. State of Intelligence Officer (NCB), decided in CrI.Petition No.4792/2020 on 24.11.2020, this Court has no jurisdiction to pass the orders on the application filed U/s 451 of Cr.P.C.

10. The learned advocate for accused relied on the judgment of Hon'ble High court of Andhra Pradesh in Criminal Revision Case No.52/2021, in the case of Karumanchi Kutumba Rao Vs. State of Andhra Pradesh and Criminal Revision Case No.95/2021 in the case of Mattam Bheemaraju Vs. State of Andhra Pradesh.

11. In the case of Zubaida Vs. State of Karnataka, the Hon'ble High Court of Karnataka, held that "Magistrate or Special Court conducting a trial over an offence under the provision of NDPS Act would not have the power to pass orders on any applications to release any items seized under the NDPS Act. Such application would have to be filed before the Drug Disposal Committee and it shall consider said application. U/s 52A of NDPS Act, jurisdiction of the Learned JMFC or Special Court is impliedly barred. The said law is laid down, very recently by our own Hon'ble High court and hence it is binding force on us. In view of the said law laid down in the above referred

Judgment, the applicant has to approach Drug Disposal Committee for passing of such orders and hence as rightly submitted by the learned public prosecutor, this court cannot grant interim custody of the vehicle in favour of the applicant/accused No.1.

12. In the judgment relied by the learned advocate for accused/applicant in Criminal Revision Petition No.95/2021 Hon'ble High court of Andhra Pradesh held that “under the provisions of NDPS Act i.e., Section 60 to 62 of the Act, Court has to decide whether such vehicle was required to be confiscated to the Government or not and till that period, court has power to give vehicle to the interim custody of the applicant. Discussing the provisions of NDPS Act, the Hon'ble High court of Andhra Pradesh granted interim custody of the vehicle, in favour of the applicant. Same view is expressed by the coordinate Bench of Hon'ble High court of Andhra Pradesh in Criminal

Revision case No.52/2021. However, with due respect to the said judgments, in view of the law laid down by our Hon'ble High Court, which has more binding nature, on this Court; this court cannot grant relief in favour of the applicant, basing on the above said two judgments of Hon'ble High Court of Andhra Pradesh.

For the above said discussion I answer Point No.1 in the Negative.

13. **Point No.2**:- For the reasons discussed above, I proceed to pass the following order:

ORDER

Application filed by accused No.1 U/s 451 of Cr.P.C., to grant interim custody of vehicle bearing reg.No.KA-26/ED-2911 seized and reported to this court in PF No.116/2020, is rejected.

[Dictated to Stenographer, transcribed & computerized by him, print out corrected and then pronounced by me in the open court on this the 7th day of December 2021]

(Umesh.M.Adiga),
Prl.District & Sessions Judge,
Dharwad