

KAMS010094902022



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE AT MYSURU**

Dated this the 19th day of February, 2024

PRESENT

Smt. Prabhavathi M. Hiremath, B.A., LL.B.(Spl.),
Prl. Sessions Judge & Special Judge,
Mysuru.

Spl.C/626/2022

Complainant: State by CEN Crime Police
Station.

(By **learned Public Prosecutor**)

Vs.

Accused: K.M.Vishnu Suresh and others

Applicant/accused No.1: Vishnu Suresh K.M. S/o
M.Sureshan Lakshmi Govindam,
P.O. Mundaloor, Vadakkumbad
Village, Kannur, Kerala – 670 622

Applicant/accused No.2: Dhanaraj P.B. S/o Boburaj P.M.,
Thovari Mala, Wayanad, Kerala –
691 522.

Applicant/accused No.3: Rahul Nair M.S. S/o Maikumaran
Nair, Padma Vilasam, Kannimel,
Pattazhy, Kollam, Kerala – 691
522.

(By **Sri. P.Gangadhara Gowda, Advocate**)

ORDER ON APPLICATIONS UNDER SECTION 457 OF Cr.P.C.

The applicant Vishnu Suresh K.M. who is accused No.1, has filed application under Section 457 of Cr.P.C., for release of Two wheeler Yamaha MT-15 bearing registration No. KL-13/AT-9172, Acer Laptop Model-MS2394, Honor 9 Lite Mobile Blue Colour, 6/64 GP, IMEI No.868136041677876, another Samsung M 30 Mobile Blue colour, Driving Licence and Aadhaar Card, which were seized under P.F. No.47/2022 at Sl.Nos. 19, 6, 2, 2, 11 and 9 respectively.

2. Accused No.2 Dhanaraj P.B. has filed another application under Section 457 of Cr.P.C., for release of Redmi Go Mobile Black Colour, iPhone-13 Black colour, Aadhaar Card and College ID Card which were seized under P.F. No.47/2022 as Sl.Nos. 3, 12 and 13 respectively.

3. Accused No.3 Rahul Nair M.S. has filed another application under Section 457 of Cr.P.C., for release of ASUS Laptop Model – FX506LH, IMEI/Batch No. N2NRCX124988087, Realme 6 Pro 6/64 GB Mobile IMEI No.868136041677876 and Aadhaar Card which were seized under P.F. No.47/2022 as Sl.Nos. 5, 4 and 14 respectively.

4. It is the case of the respective applicants who are accused No.1 to 3 that, the seized items are not required by the complainant Police for the purpose of investigation, as investigation is already completed. The applicants require their

respective items for their day to day and daily use and if they are kept idle in the complainant Police Station, they will become useless and unworthy condition. The applicants undertake that they will not alienate nor change the colour, identity of the items till disposal of the case and they undertake that they will not destroy the documents nor make any changes in them. They are ready to abide by the conditions imposed by this Court and to produce the respective items whenever called for and prayed to allow the application.

5. For the above said applications, the learned Public Prosecutor has filed common objections stating that, the items sought for interim custody of the accused/applicants are required at the time of trial, for the purpose of identification. They were seized by the Investigating Officer as they were used at the time of commission of crime. If they are released, once again there is a chance of using the same for commission of the offence and after release, if they are not produced during the trial, it will cause hurdle to the progress of the case and prayed to dismiss the applications.

6. Heard both sides.

7. The points that arise for my consideration are as follows:

- 1. Whether applicants/accused No.1 to 3 are entitled for interim custody of the Laptops, Mobile Phones, Driving Licence, Aadhaar Cards and College ID Card as sought in their respective applications ?**

2. Whether applicant/accused No.1 Vishnu Suresh K.M. is entitled for interim custody of Yamaha MT-15 vehicle bearing registration No. KL-13/AT-9172 seized under P.F. No.47/2022 at Sl.No.19 ?

3. What order ?

8. For the reasons stated in the subsequent Paras, I answer the above points as under:

Point No.1 :: In the **negative**

Point No.2 :: In the **affirmative**

Point No.3 :: As per final order, for the following:

REASONS

9. **Point No.1:**

From going through the prosecution records, it is clear that, on completion of investigation, Charge-sheet is filed by the Investigating Officer for the offence punishable under Section 22(C) of the N.D.P.S. Act. Further it is clear from the prosecution records that, the Investigating Officer has sought permission for submission of additional Charge-sheet as he wants to do further investigation with reference to mobile phones by securing C.D.R., C.A.F. Form and 65(b) Certificate and so also with reference to Laptops seized during the investigation. Therefore, at this stage, the applicants/accused persons are not entitled for interim custody of either Mobiles or Laptops or other items seized during the investigation. Hence, **point No.1** is answered in the **negative**.

10. **Point No.2:**

Under Section 63 of the N.D.P.S. Act, in the trial of offences under the Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under the Act is liable to confiscation under Section 60 or Section 61 or Section 62 and if it decides that the article is so liable, it may order confiscation accordingly. Under Section 61 of the N.D.P.S. Act, any goods used for concealing any narcotic drug psychotropic substance or controlled substance which is liable to confiscation under this Act shall also be liable to confiscation. As per Explanation to Section 61, "goods" does not include conveyance as a means of transport. Therefore, it cannot be said that, the word "goods" used in Section 61 which referred in Section 63 includes the conveyance as a means of transport.

11. It is the case of the prosecution that, in this case, the vehicle was used for the purpose of transportation of ganja. In view of my above said observation, at this stage, there is no need to decide whether order is required to be passed for confiscation of the goods under Section 60, 61 or 63 of the N.D.P.S. Act. For the purpose of identification, vehicle is necessary during the trial. Now the question is, whether on that ground, application is required to be rejected.

12. The Hon'ble Apex Court, in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in **2002(10) SCC 290**, has held as as under:

“Criminal Procedure Code, 1973 – Ss. 451 & 457 – Disposal of mudammal property, kept in police custody pending trial – Procedure for custody and disposal of valuable articles, vehicles etc. - In furtherance of

where accused disputes that he is not involved in the alleged incident and no article was found on him, Supreme Court clarifying and passing directions – Court further clarifying that there may not be any necessity of producing the vehicle before the court and seizure report may be sufficient”

Same was followed by Hon’ble High Court of Karnataka in the case of ***Shravanan S.V. Vs. State of Karnataka*** and ***Sri Manjunath Vs. State of Karnataka***.

13. In the light of above said principles laid down by their Lordships, if the vehicle is kept open to sun and air during pendency of trial, its value will be reduced. The vehicle can be secured for the purpose of identification during the trial by imposing conditions or the photographs of the vehicle can be shown to the witnesses during the trial. It will serve the purpose of the prosecution.

14. The applicant-accused No.1 Vishnu Suresh K.M. has produced the original RC Card of the vehicle. As per RC Card, vehicle bearing registration No. KL-13/AT-9172 is standing in the name of applicant/accused No.1. The accused No.1 being the owner of the vehicle, is entitled for interim custody of the vehicle, subject to conditions. Hence, for the above said reasons and discussion, **point No.2** is answered in the **affirmative**.

15. Point No.3:

In the result, I proceed to pass the following:

ORDER

Application filed by the applicant/accused No.2 Dhanaraj P.B. and application filed by the applicant/accused No.3 Rahul Nair M.S. under Section 457 of Cr.P.C. are hereby dismissed.

Application filed by the applicant/accused No.1 Vishnu Suresh K.M. under Section 457 of Cr.P.C. is hereby allowed in part.

Interim custody of the vehicle Yamaha MT-15 bearing registration No. KL-13/AT-9172 Engine No. G3N4E0218716 seized under Panchanama and reported under P.F.No. 47/2022 at Sl.No.19 is given to the applicant, subject to executing Indemnity Bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with one surety for like-sum, on the following conditions:

1. The applicant/accused No.1 shall not alienate or dispose of the vehicle to anybody during pendency of this case.
2. He shall not change the colour, nature, and identity of the vehicle till disposal of the case.
3. He shall produce the vehicle whenever called by this Court.
4. The Investigating Officer is directed to release the vehicle by conducting Panchanama and taking photographs of all sides of the vehicle.

Breach of any of these conditions would entail forfeiture of Indemnity Bond.

Intimate the factum of conditions imposed by this Court to the concerned R.T.O., with a direction to make necessary entry in the concerned R.C. Register.

Application filed by the applicant/accused No.1 under Section 457 of Cr.P.C. for release of other items is hereby dismissed.

(Dictated to the Stenographer Grade-1, transcribed by her on Computer and after corrections, signed and then pronounced by me in open Court on this the **19th day of February, 2024.**)

(Prabhavathi M. Hiremath)
Prl. District and Sessions Judge,
Mysuru.

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