

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE-II,
N. PARAVUR**

Present:- Smt. Jyothi V., Additional Sessions Judge-II
Friday, the 26th day of September, 2025/4th Aswina, 1947

Crl. M.P. No.2505/2025

in

S.C. No. 1098/2025

(Crime No.15/2025 of Excise Range Office, N. Paravur)

Petitioner/Accused No.1 :-

Aby Varghese, S/o. Varghese P. P., aged 34 years,
Puthussery House, Cherai P.O., Pallipuram Village, Ernakulam.

By Adv. Sri. Safdarshah T. I.

Respondent/Complainant:-

State of Kerala represented by Excise Range Office,
North Paravur

By Addl. Public Prosecutor N. Paravur, Sri. M. B. Shaji

This petition is filed to release Suzuki Gixxer with Reg. No. KL-42--1115, and Iphone 13 Green IMEI number 356228329621103 the said for the interim custody to the petitioner, having been heard on 23.09.2025 and the court on 26.09.2025 passed the following:-

ORDER

This application is filed by the 1st accused in S.C.No.1098/2025 in Crime No.15/2025 of Excise Range Office, North Paravur, registered u/s. 22 (c), 20(b) (ii)(B), 22(a) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, seeking release of his mobile phone and vehicle from court custody u/s.491 of Bharathiya Nagarik Suraksha Sanhitha, 2023.

2. The prosecution alleges that, on 18.02.2025, the accused were found in possession of 1.050 grams of Ganja, 166 grams of Hashish Oil, 0.19 grams of methamphetamine and 0.45 grams of LSD stamps in a motorbike

bearing registration No. KL 42 L 1115 and thereby committed the alleged offences.

3. The petitioner/ accused No.1 claimed that, during the course of investigation, an I-Phone 13 with IMEI number 356228329621103 and bike bearing No. KL 42 L 1115 were in the judicial custody of this Hon'ble Court as T No. 167/2025 as item number 5 & 6. The copy of the RC book produced as a document. If the vehicle and mobile were kept in custody, there is a chance for decay, it would cause much hardship and injury to the petitioner, and therefore prays that the mobile phone be released to him.

4. The Learned Public Prosecutor strongly opposed the petition contending that release of the mobile phone and the vehicle may enable the petitioner to contact individuals from the phone's contact list and potentially involve himself in similar criminal activities. The accused's bike is capable of traveling faster than ordinary bikes, enabling him to conduct drug sales at one place and quickly move to another. At present, there is a likelihood that the accused, who is on bail, may use his bike for drug sales and swiftly escape from the police officers. Therefore, the prosecution urges that the mobile phone and vehicle should not be released to the accused until final disposal of the case.

5. Heard both sides.

6. The petitioner was already granted bail by the Hon'ble High Court of Kerala in Bail Application No.9278/2025 dated 14.08.2025. It is not in dispute that the mobile phone and the vehicle were seized from the possession of the petitioner.

The prosecution has not put forth any case that the said mobile phone is required for the purpose of any further investigation or forensic examination. In the absence of such necessity, and having regard to the fact that prolonged retention of the mobile phone in court custody is likely to render it unusable and diminish its value, this Court is of the considered view that the petitioner is entitled to the interim custody of the same.

7. It is relevant to note that the **Hon'ble High Court of Kerala in *Prince K V v. State of Kerala*** (Order dated 12.10.2023 in CrI.M.C. No. 7803/2023), while considering the issue of release of property, has reiterated the principle laid down by the Hon'ble Supreme Court in ***Sundar Bhai Ambalal Desai v. State of Gujarat [(2003) 2 KLT 1089 (SC)]***, wherein it was emphatically held that seized articles and properties, including vehicles and electronic gadgets, which are not required for the purpose of investigation or evidence, should be released to the rightful owner or claimant without unnecessary delay. The Court observed that allowing such articles to remain in the custody of the court or the police station indefinitely would not serve any useful purpose and may, in fact, result in deterioration or devaluation of the property, thereby causing irreparable loss to the owner. The Hon'ble High Court of Kerala, relying on the above authority, held that when the prosecution has no case that the seized property is needed for further investigation or trial, and when there is no dispute regarding the ownership or identity of the article, the same ought to be

returned to the claimant, subject to appropriate safeguards or conditions. The principle behind such a direction is to ensure that property seized in connection with criminal proceedings is not unnecessarily retained, especially when its evidentiary value has either been exhausted or is not required at all.

8. Applying the above legal principles to the facts of the present case, it is evident that the mobile phone seized from the petitioner is neither required for any forensic examination nor included in the forwarding note. With respect to the vehicle also, no request has been made by the prosecution for its continued retention for the purpose of investigation or trial. Therefore, the prolonged custody of the mobile phone and vehicle in Court is unwarranted and contrary to the settled legal position laid down in ***Sundarbhai Ambalal Desai v. State of Gujarat* [(2002) 10 SCC 283]** and ***Prince K.V. v. State of Kerala* [2019 (4) KLT 623]**.

In the result, this petition is allowed subject to the following conditions:

1. The petitioner shall execute a separate bond for ₹75,000/- (Rupees seventy five Thousand only) for the mobile and Rs. 2,00,000/- (Rupees Two Lakhs Only) for the motorbike with two solvent sureties for the like sum each to the satisfaction of this Court. The sureties shall produce their original title deed with a photocopy for verification.
2. The petitioner shall produce the mobile phone and the vehicle before this Court or before the authorised officer, during the course of enquiry, trial or confiscation proceedings, as and when directed.
3. The petitioner shall not sell, alienate, encumber, or otherwise transfer the

mobile phone or the vehicle in favour of any third party without the prior permission of this Court.

4. The petitioner shall not make any alteration or modification in the mobile phone or the vehicle so as to render them unidentifiable.
5. The petitioner shall not use the mobile phone or the vehicle for commission of any similar offence.
6. Photographs of all sides of the mobile phone and the vehicle shall be taken prior to their release, at the cost of the petitioner, and the same shall be kept in the case records.
7. The petitioner shall submit a copy of RC particulars of the vehicle within two weeks from the date of release of the vehicle.

Dictated to the C.A., transcribed and typed by her, corrected by me, and pronounced in open court on this the 26th day of September, 2025.

Jyothi V.,
Additional Sessions Judge-II

Appendix:- Nil

Additional Sessions Judge-II

Typed by : Jini N.S.
Com.by: Deepa T.A.

Crl. M.P. 2505/2025 in
S.C. No. 1098/2025
Order dated 26.09.2025.