

IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, KALPETTA

Present: - Smt. Sara Fathima J, Judicial First Class Magistrate, Kalpetta

Monday, this the 25th day of May, 2026
4th day of Vaisakha, 1948

C.M.P.No: 02/2026
(In Excise Range Office, Kalpetta in Cr.No.33/2026)

Siraj.V.K., Aged 42 years, S/o Aboobacker, : Petitioner/Accused
Pilakkal House,
Thinapuram P.O., Muppainadu Village,
Vythiri Taluk, Wayanad Dt.
(By Adv.Shyju Manisseril)

Vs

State represented by Excise Range Officer, Kalpetta in : Complainant/Respondent
Cr.No.33/2026
(By Sri. Syam Krishna.K.R, Assistant Public Prosecutor,
Gr-II)

ORDER

The application is under section 497 of BNSS for the release of Major Turbo Jeep bearing registration No. KL 13 P 1049. It was seized in connection with Crime No. 33/2026 of Kalpetta Excise Range Office. The crime is registered for offence punishable under Section 20(b)(ii)A of the Narcotic Drugs and Psychotropic Substances Act, 1985 on the allegation that, at about 8:40 P.M on 01.05.2026, the petitioner was found in possession of 44.64 gm of ganja in front of the Harrisons Malayalam Limited Central Hospital gate at Muppainadu in Vythiri Taluk in the above said Jeep. The petitioner seeks the release of his vehicle. Hence the petition.

2. The Assistant Public Prosecutor filed a report objecting the release of the vehicle.

3. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor.

4. The point that arises for consideration are :-

(i). Should the vehicle be released to the petitioner.

5. **The point** - It does not take a vehicle to carry 44.64 gm of ganja. Hence it cannot be said that the vehicle is used as a means of transport. Neither is the vehicle used for conveyance. Therefore, the facts of this case are not hit by the bar under section 52A of the NDPS Act. In ***Shanil v. State of Kerala (2023 (2) KHC 88)*** the Hon'ble High Court of Kerala held that that the jurisdictional courts have the power to grant interim custody under S.457 CrPC, irrespective of the procedure for disposal stipulated in S.52A of the Act.

6. From the decision cited above, it is evident that this court has jurisdiction to grant interim custody of vehicles irrespective of the procedure prescribed under section 52A of the NDPS Act. Confiscation of the vehicle by the Drug Disposal Committee will depend on the outcome of the trial. If the vehicle is left idle till the formalities for disposal is completed it will render the vehicle useless. Since there is no legal bar in granting interim custody, the law laid down by the Apex Court in ***Sunderbhai Ambalal Desai*** will apply to the case. Moreover, the decision of the Hon'ble High Court of Kerala in ***Wilson C C v State of Kerala (2022 (7) KHC 450)*** also supports the view that the vehicle is liable to be released if the same was not used for conveyance of contraband.

7. Therefore, the point is found in favour of the petitioner.

8. Petitioner is the registered owner of the vehicle. Thus, the vehicle can be released in the name of the petitioner.

9. The police have reported that there is no criminal antecedent for the petitioner. However, it is apprehended that the petitioner may commit a similar offence using the same vehicle. This could be addressed by imposing proper conditions. Hence, this court is of the view that the interim custody of the vehicle can be given to the petitioner on the following conditions:-

1. Petitioner shall execute a bond for a sum of ₹50,000/- with two solvent sureties each for the like sum.
2. Petitioner shall take photographs of the vehicle from all directions showing its present condition along with the pen drive. Photographs shall be attested by the petitioner and the person currently having custody of the vehicle.
3. The same shall be accompanied by Section 63 certificate under the Bharatiya Sakshya Adhiniyam, 2023 and in accordance with the schedule thereunder.
4. Petitioner shall produce the vehicle as and when required by the Court.
5. Petitioner shall file an undertaking that he will not alienate, encumber, or make any modification in the vehicle without obtaining prior permission from this Court till a final order is passed.
6. Petitioner shall also produce the original registration certificate and other documents, copies of which are produced along with this petition,

for verification and the office shall return the original registration certificate and other documents after verification.

7. On getting intimation from this court regarding the compliance of conditions, the person who is presently in custody of the vehicle mentioned above shall handover the vehicle to the interim custody of the petitioner.
8. The release of the vehicle is subject to the outcome of trial.
9. The petitioner shall not use the vehicle for committing any offence.

In the result, the CMP is allowed.

(Pronounced by me in the open court this the 25th day of May 2026)

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE

//True copy//

**JUDICIAL FIRST CLASS MAGISTRATE,
KALPETTA**