



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 20TH DAY OF NOVEMBER 2023 / 29TH KARTHIKA, 1945

CRL.MC NO. 7453 OF 2023

CRIME NO.47/2021 OF EXCISE ENFORCEMENT AND ANTI NARCOTIC

SPECIAL SQUAD, PALAKKAD, Palakkad

AGAINST THE ORDER/JUDGMENT CRMC 3068/2023 OF ADDITIONAL

DISTRICT COURT & SESSIONS COURT - IV, PALAKKAD / III

ADDITIONAL MACT, PALAKKAD

PETITIONER/S:

PRASAD K.R, AGED 61 YEARS
S/O. RAMAKRISHNAN NAIR, PARVANAM, ERAVUKADU,
VADAKKAL P.O, SANTHANAPURAM, ALAPPUZHA DISTRICT,
PIN - 688003

BY ADVS.
G.HARIHARAN
PRAVEEN.H.
K.S.SMITHA
V.R.SANJEEV KUMAR
BIJOY SAM GEORGE

RESPONDENT/S:

- 1 ASSISTANT COMMISSIONER OF EXCISE
EXCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL
SQUAD, OFFICE OF THE ASSISTANT EXCISE
COMMISSIONER, EXCISE TOWER, PALAKKAD, PIN -
678001
- 2 DISTRICT DRUG DISPOSAL COMMITTEE
(NDPS AND CONVEYANCE DISPOSAL COMMITTEE),
PALAKKAD REPRESENTED BY THE DEPUTY EXCISE
COMMISSIONER (CHAIRMAN)., PIN - 678001
- 3 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 4 T.C. THOMAS, S/O CHAKKUNI, AIRPORT JUNCTION,



Crl.M.C No. 7453 of 2023

THOOKKUPARAMBU, ANGAMALY VILLAGE, ALUVA TALUK,
ERNAKULAM (IMPEADED AS PER ORDER IN CRL.M.
03/23 IN CRL.MC 7453/2023 DATED 11.10.2023)
BY ADVS.
No Advocate
N.P.SILPA

OTHER PRESENT:

SMT SREEJA V, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20.11.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



P.V.KUNHIKRISHNAN, J.

Crl.M.C No. 7453 of 2023

Dated this the 20th day of November, 2023

ORDER

The above Crl.M.C is filed with following prayers:

“(i) Set aside Annexure-XI Order issued by the Hon’ble Sessions Court-IV, Palakkad in Crl. Mis. Petition. No.3068/2023 on 26.08.2023 as patently arbitrary and unjust.

(ii) Direct the 2nd respondent to release the vehicle mentioned in Annexure-I following the dictum laid down in the matter of Shanil Vs. State of Kerala reported in 2023(2)KHC 88 to the petitioner on appropriate conditions in the interest of justice . And

(iii) To pass such orders or reliefs as this Hon’ble Court deems fit in the interest of justice.” (sic)

2. Annexure XI is an order passed by the Sessions Court Palakkad by which an application filed by the petitioner under Section 457 Cr.P.C to release vehicle bearing Registration No.KL-40/H-0452 is dismissed. The above vehicle was seized in connection with Crime No.47 of 2021 of Excise Enforcement & Anti-Narcotic Special Squad, Palakkad which is now pending as Sessions Case No.214 of 2022.



3. The prosecution case is that accused 1 to 10 entered into a criminal conspiracy for possession and transportation of Ganja. Pursuant to the conspiracy, while they were transporting Ganja on 12.09.2021 at about 7.25 am along the Salem -Kanyakumari National Highway at Padinjare Yakkara, the Excise Circle Inspector, Excise Enforcement Squad intercepted the tourist bus bearing Reg.No. KL-40/H-452 driven by the 1st accused and cars bearing Reg.No. KL-07/CG-4567 and KL-33/G-6670. On search of tourist bus, the Circle Inspector seized 82.5 kg of dried Ganja. He also seized 42.5 Kg of dried Ganja from the car bearing Reg.No. KL-07/CG-4567 and 20.5 kg of dried Ganja from the car bearing Reg.No. KL-33/G-6670. Accused Nos.2 and 3 were found in the car bearing Reg.No. KL-07/CG-4567 and accused Nos.4 and 5 were found in the car bearing Reg.No. KL-33/G-6670. It is the case of the prosecution that the 1st accused as per the direction of the 6th accused transported the Ganja from Andhrapradesh with the assistance of accused Nos.2 to 6, 9 and 10. According to the petitioner, the owner of the vehicle is not an accused in the present case. The petitioner submitted that the



vehicle was hypothecated with Cholamandalam Investment and Finance Company Ltd. Thereafter, he had entered into an agreement for sale of his vehicle bearing Reg.No.KL-40/H-0452 with one T.C.Thomas. The said T.C.Thomas was operating the aforesaid bus on contract carriage by conducting regular service between Uzhavur in Kottayam District to North Eastern States in India. The petitioner was not aware of the seizure of the vehicle is the further submission. The said T.C.Thomas did not inform the petitioner about seizure of the vehicle. He came to know about the seizure only on 25.10.2021 when he had received notice from the Special Squad. The said T.C.Thomas not only violated the terms of agreement by committing default in repayment of loan but also permitted the vehicle to be used by the accused in the above crime for conveyance of contraband without the knowledge of the petitioner. Subsequently, it is submitted that the petitioner cleared the entire loan amount due to the Finance Company on 15.10.2022. Therefore, it is submitted that the petitioner is the best person, who is entitled to the custody of the vehicle. Notice was issued to the said T.C.Thomas and he did not appear before the court



below. This Court also issued notice to T.C.Thomas and he did not appear before this Court also. The petitioner submitted that in the light of the decision in **Shanil v. State of Kerala [2023 (2) KHC 88]**, the court below ought to have release the vehicle under section 457 Cr.P.C. The learned Sessions Judge dismissed the petition stating that the vehicle is used as conveyance for carrying the contraband. The court below also found that even as per the seizure mahazar, the contraband article (Ganja) were kept in sacks inside the goods carriage box of the bus bearing reg.No.KL-40/H-0452 from where it was transferred to other vehicles, which means that the bus was used for carrying contraband. That is the reason why the learned Sessions Judge dismissed the petition. Aggrieved by the same, this Crl.M.C is filed.

4. Heard counsel for the petitioner and the Public Prosecutor.

5. This Court perused Annexure XI order. I see no reason to interfere with the above order passed by the learned Sessions Judge. The learned Sessions Judge, after going through records, found that the vehicle is used for conveyance of the contraband and therefore, the



interim custody cannot be given. The learned Sessions Judge also relied on the judgment of this Court in **Shanil v. State of Kerala [2023 (2) KHC 88]**. I am in perfect agreement with the learned Sessions Judge. I am of the opinion that the vehicle cannot be released because it is used for conveyance.

6. At this stage, the counsel for the petitioner submitted that the petitioner is ready to furnish the bank guarantee for the value of the vehicle as assessed by the competent authority and the petitioner may be given the vehicle. It is also submitted that the confiscation proceeding is also not started. In the light of the above submission, this Court again considered the matter. Admittedly, Sessions Case is pending trial. Moreover, confiscation proceeding is also not reached anywhere. The question is whether the vehicle is to be kept in the premises in the open air exposed to sun and rain. If the vehicle is used for conveyance of contraband articles under the NDPS Act, the vehicle can be confiscated. But till the proceedings are concluded, there is no prohibition in releasing the vehicle under section 451 Cr.P.C after imposing stringent conditions, if the petitioner is ready to furnish the



bank guarantee for the value of the vehicle which is to be assessed by the competent authority. There can be a direction to release the vehicle on condition that the petitioner will not repeat the offence using the vehicle and if such a situation arise, the court can repossess the vehicle. Similarly, if the confiscating authority ordered confiscation, the bank guarantee can be invoked in accordance with law. While releasing the vehicle, the learned Sessions Judge will impose appropriate conditions in the light of the decision of the Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat (AIR 2003 SC 638)**.

Therefore, this Crl.M.C is disposed of in the following manner:

1. Annexure XI order is set aside.
2. The Additional Sessions Judge-IV, Palakkad is directed to get a valuation certificate of the vehicle bearing Reg.No.KL-40/H-0452 from the competent authority.
3. Based on the valuation certificate, if the petitioner is ready to furnish bank guarantee for the value of the vehicle, the vehicle shall be released to the petitioner, after imposing appropriate conditions as held by the Apex Court in



Sunderbhai Ambalal Desai v. State of Gujarat (AIR 2003 SC 638).

4. If any similar offence is committed using this vehicle, the court can repossess the vehicle, without any further order from this Court.

5. If the vehicle is confiscated, the court/confiscating authority is free to pass appropriate orders to invoke the bank guarantee, in accordance with law, and if necessary can repossess the vehicle.

sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

das

**APPENDIX OF CRL.MC 7453/2023****PETITIONER ANNEXURES**

Annexure I	A TRUE COPY OF THE REGISTRATION CERTIFICATE OF VEHICLE BEARING REGISTRATION NO. KL-40H-0452
Annexure II	A TRUE COPY OF THE CONTRACT CARRIAGE PERMIT ISSUED BY THE RTA, ALAPPUZHA RELATING TO THE BUS NO. KL-40H-0452 WHICH IS VALID UPTO 14.02.2025
Annexure III	A TRUE COPY OF THE AGREEMENT DATED 26.05.2021 EXECUTED BETWEEN THE PETITIONER AND THE PERSON NAMED SRI.T.C. THOMAS
Annexure IV	A TRUE COPY OF THE STATEMENT DATED 25.10.2021 OBTAINED BY THE 1ST RESPONDENT FROM THE PETITIONER IN CONNECTION WITH CRIME NO.47/2021 OF PALAKKAD EXCISE ENFORCEMENT & ANTI-NARCOTIC SPECIAL SQUAD
Annexure V	A TRUE COPY OF THE APPLICATION DATED 30.03.2022 FILED BEFORE THE 1ST RESPONDENT FOR INTERIM RELEASE OF THE VEHICLE MENTIONED IN ANNEXURE-I AND SEIZED IN CONNECTION WITH CRIME NO.47/2021
Annexure VI	A TRUE COPY OF THE ORDER DATED 01.08.2023 BY THIS HON'BLE COURT IN CRL.M.C. NO. 3985/2022
Annexure VII	A TRUE COPY OF THE ORDER DATED 19.08.2022 PASSED BY THE 2ND RESPONDENT
Annexure VIII	A TRUE COPY OF THE JUDGMENT MADE IN M/S. SMART LOGISTICS, KOZHIKODE VS. STATE OF KERALA AND OTHERS [2020 (5) KLT 298]
Annexure IX	A TRUE COPY OF THE JUDGMENT MADE IN W.P.(CRL.) NO.905/2022 BY THIS HON'BLE COURT ON 02.02.2023
Annexure X	A TRUE COPY OF THE MEMORANDUM OF CRIMINAL MISCELLANEOUS PETITION FILED AS CRL.MISC.PETITION NO.3068/2023 BEFORE THE HON'BLE SESSIONS COURT-IV, PALAKKAD



Crl.M.C No. 7453 of 2023

- Annexure XI A TRUE COPY OF THE ORDER DATED
26.08.2023 MADE IN CRL. MISC. PETITION.
NO.3068/2023 BY THE HON'BLE SESSIONS
JUDGE NO.IV, PALAKKAD
- Annexure XII A TRUE COPY OF THE RECEIPT ISSUED BY
M/S CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED IN THE NAME OF
THE PETITIONER ON 15.10.2022 EVIDENCING
SETTLEMENT OF THE AMOUNT