

(2023) 05 KL CK 0174

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 297 Of 2023

Ameershan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 24-05-2023

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 22(b), 29, 60(3)

Citation : (2023) 05 KL CK 0174

Hon'ble Judges : V.G.Arun, J

Bench : Single Bench

Advocate : P.M.Manoj, T.B.Gafoor, S.Russel, P.Anto Thomas, Hamzath Ali V.K., Safwan K., Meera Prakash, Anzar Basheer, M.C.Ashi

Final Decision : Allowed

Judgement

V.G.Arun, J

1. The petitioner is the owner of a Toyota Innova car bearing registration No.KL-60-K-4142, seized in connection with Crime No.60 of 2021 registered at the Mananthavady Excise Range against five persons named Shibin, Muhammed Niyas, Ajmal M., Muhammed Ajmal and Nadirsha under Sections 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act ('the Act' for short).
2. The prosecution allegation is that, the above named persons, while travelling in the petitioner's vehicle, were found to be carrying 7 gms of MDMA, concealed in the dashboard of the car. After completion of investigation and filing of final report, the case is now pending on the files of the Special Judge's Court, Wayanad as S.C No.368 of 2021.
3. Being the owner of the vehicle and not an accused, the petitioner sought interim custody of his vehicle. The Special Court having rejected that application, this CrI.R.P. is filed.
4. Learned counsel for the petitioner contended that the reasoning of the Special

Court is wrong. The application for interim custody is rejected by relying on Section 60(3) of the Act. It is contended that, confiscation under Section 60(3) would come into play only after trial and has no application in an application for interim custody.

5. Learned Public Prosecutor referred to paragraph 8 of the order, wherein the Special Court referred to this Court's observation in *Shanil and Ors. v. State of Kerala and Ors.* [2023 (2) KHC 88] that, even for the purpose of deciding an application for interim custody, reference can be made to Section 60(3) of the NDPS Act.

6. No doubt, in Shanil's case it is observed that the jurisdictional court can decide whether the seized vehicle could be termed as conveyance used for carrying contraband and the complicity or otherwise of the owner, as stipulated in Section 60(3). Even then, the petitioner not being an accused and in the absence of materials to indicate that the vehicle was entrusted with the accused, with the knowledge that it would be used for clandestine purposes, I am inclined to direct release of the vehicle.

7. Accordingly, the Special Judge/Additional District and Sessions Judge-II, Kalpetta is directed to release the vehicle bearing registration No.KL-60-K-4142 on interim custody, subject to the petitioner satisfying the court that he is the registered owner of the vehicle. The Special Court can impose appropriate conditions while releasing the vehicle.

The Crl.R.P is allowed as above.