

Navas. a vs State of Kerala Represented by the Public Prosecutor

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Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : WP(Crl.)/357/2022

Appellant : Navas. a

Respondent : State of Kerala Represented by the Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944
WP(CRL.) NO. 357 OF 2022

PETITIONER: NAVAS. A., AGED 34 YEARS, S/O SAMAD,
PALLIPARAMBIL HOUSE, PADAMUGHAL, KAKKANAD, ERNAKULAM
- 682030 BY ADVS.SRI.ANISH ANTONY ANATHAZHATH SRI.VIJEESH
K.S. RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031. 2
THE CHAIRMAN, DRUG DISPOSAL COMMITTEE & POLICE CHIEF,
KOCHI CITY, ERNAKULAM - 682011. 3 THE SHO PALARIVATTOM

POLICE STATION, PALARIVATTON JN, ERNAKULAM - 682025. BY
PUBLIC PROSECUTOR SMT.MAYA M.N.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: WP(Crl.) No.357 of 2022 2

JUDGMENT

Dated this the 3rd day of January, 2023 The Writ Petition on hand is filed under Article 226 of the Constitution of India seeking for the following reliefs:

I. To issue a writ of mandamus or any other appropriate writ, order or direction declaring the seizure as illegal and void of the vehicle bearing registration number KL-07-CH-4585 by the 3rd respondent. II. to issue a writ of mandamus or any other appropriate writ, order or direction to the 2nd respondent to pass an order to finally dispose of the vehicle by releasing it to the petitioner being the registered owner. III. To issue a writ of Mandamus or any other appropriate order, writ or direction directing the 2nd respondent not to proceed with the confiscation procedures. IV. To issue a writ of Mandamus or any other appropriate order, writ or direction directing to quash the Exhibit P7 Circular and declare it as unconstitutional. V. to pass such other writ order or direction that this Honble Court may deem fit and proper in the facts and circumstances of the case;

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2. Petitioner is the registered owner of a Maruti Swift

Desire Motor Cab (Taxi) bearing registration number KL-07-CH- 4585 and also holder of Contract Carriage Permit Number P.Co.7/3587/2018. On 20.09.2021 the vehicle was borrowed by one of petitioners fellow driver for hire. On 22.09.2021, the petitioner was informed by the police that the vehicle hired was seized for possession by its driver of some narcotic drugs. FIR No.1741/2021 was registered

following the seizure of the contraband and the vehicle. The petitioner preferred an application before the 2nd respondent, Chairman, Drug Disposal Committee and Police Chief, Kochi City to get the vehicle released in his custody, true copy of which is produced alongwith the petition on hand as Ext.P5. Since Ext.P5 was not acted upon by the 2 nd respondent, the petitioner approached this Court by filing Writ Petition (Crl) No. 238/2022 and obtained an order on 28.03.2022 directing the 2 nd respondent to consider his representation pending, after granting reasonable opportunity of being heard and to pass appropriate orders. But the 2nd respondent rejected the application, true copy of which order is produced alongwith the petition on hand as Ext.P7. Aggrieved by the order of the 2 nd respondent, the petitioner has filed the Writ Petition on hand. WP(Crl.) No.357 of 2022 4

3. The Apex Court has recently held in *Sainaba V. State*

of Kerala [2022 (7) KHC 273 (SC)] that the Special Court is empowered to exercise jurisdiction to grant interim release of the vehicle, on imposition of terms and conditions to be determined by it, and in that context, this Court finds it appropriate to issue a direction to the petitioner to approach the Special Court by filing application for that. In the result, the Writ Petition (Crl.) is disposed of with a direction to the petitioner to prefer an application under Section 457 of the Code of Criminal Procedure, 1973 before the Special Court seeking for release of the vehicle in interim custody pending inquiry and trial of the case wherein it stands seized. On filing of such an application, the court concerned shall pass orders for grant of the vehicle in interim custody subject to imposition of terms and conditions, as it deems fit, within a period of two weeks from the date of filing of the application. Sd/- MARY JOSEPH JUDGE MJL WP(Crl.) No.357 of 2022 5
APPENDIX OF WP(CRL.) 357/2022 PETITIONERS EXHIBITS: EXHIBIT P1 TRUE COPY OF REGISTRATION CERTIFICATE OF KL-07-CB-3708 EXHIBIT P2 TRUE COPY OF INSURANCE OF VEHICLE KL-07-CB- EXHIBIT P3 TRUE COPY OF THE CONTRACT CARRIAGE PERMIT OF THE VEHICLE KL-07-CB-3708 EXHIBIT P4 TRUE COPY OF FIR NO. 1741/2021 DATED 22.09.2021 PALARIVATTOM POLICE STATION, ERNAKULAM DISTRICT EXHIBIT P5 A TRUE COPY OF THE APPLICATION DATED 22.11.2021 SUBMITTED BY THE PETITIONER TO 2ND RESPONDENT EXHIBIT P6 TRUE COPY OF THE

JUDGMENT IN WPCRL NO: HIGH COURT OF KERALA EXHIBIT P7 TRUE COPY OF THE ORDER DATED 18.04.2022 BY THE 2ND RESPONDENT EXHIBIT P8 TRUE COPY OF THE CIRCULAR NO.18/2020/PHQ DATED 07.05.2020 ISSUED BY THE DGP OF POLICE, KERALA STATE RESPONDENTS EXHIBITS: NIL TRUE COPY PA TO JUDGE

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