

Hamsa vs State of Kerala

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Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : WP(Crl.)/764/2022

Appellant : HAMSA

Respondent : State of Kerala

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. 764 OF 2022 PETITIONER :- HAMSA AGED 40 YEARS
S/O ABDULLA, KOTTAPURATH HOUSE, KAIPPORIKKARA,
MARAMPALLY PO, ALUVA, ERNAKULAM- 683105. BY ADVS.
C.R.JAYAKUMAR NOBEL RAJU RESPONDENTS :-

1 STATE OF KERALA REPRESENTED BY THE PRINCIPAL
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT (EXCISE),
SECRETARIAT, THIRUVANANTHAPURAM-695 001. 2 THE
COMMISSIONER OF EXCISE, GOVERNMENT OF KERALA, EXCISE

COMPLEX, VIKAS BHAVAN P.O, THIRUVANANTHAPURAM-695 033.
3 THE CHAIRMAN OF DRUGS DISPOSAL COMMITTEE, ERNAKULAM
RURAL, ALUVA, SUB JAIL ROAD, PERIYAR NAGAR, ALUVA,
ERNAKULAM-683101. 4 THE STATION HOUSE OFFICER,
PERUMBAVOOR POLICE STATION, PERUMBAVOOR PO, KOLLAM -
683542. BY SRI.DENNIS DEVASSY, PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 03rd day of January, 2023 This Writ Petition is filed under Article 226 of the Constitution of India seeking for the following reliefs :- (i) To call for the records leading to Ext.P3 rejection order issued by the 3rd respondent.

(ii) To issue a writ of mandamus or other appropriate writ, order or direction to set aside Exhibit P3 rejection order.

(iii) To issue a writ of mandamus or other appropriate writ, order or

direction commanding the 3rd respondent to release the petitioners 2012 Model Toyota Innova Car bearing Regn.No. KL-39-D-9119 involved in FIR No.1915/2021 of Perumbavoor Police Station, Ernakulam either temporally or permanently within a stipulated time as directed by this Honble Court.

(iv) To declare that the Petitioner is entitled to get temporarily release of 2012 Model Toyota Innova Car bearing Regn.No.KL-39-D-9119 involved in FIR No.1915/2021 of Perumbavoor Police Station, Ernakulam.

(v) Petitioner also prays that this Honble Court may be pleased to dispense with the translation of the documents produced in the vernacular language.

(vi) To issue such other reliefs as this Honble Court may deem fit and proper in the circumstances of the case.

2. According to the petitioner, he is the registered owner

of a 2012 Model Toyota Innova Car bearing Registration No.KL- 39-D-9119. On 11.10.2021 at about 1.30 noon some persons were arrested by the 4th respondent following seizure of 30.200 kilograms of Cannabis, in front of DTDC Couriers, Kunnukuzhi Junction, Marampally Village. Crime No.1915/2021 was registered against those persons by Perumbavoor Police Station alleging commission of offences punishable under Sections 20(b)

(ii) & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act). The vehicle was seized in the said crime.

3. The petitioner then approached the Drug Disposal Committee, Ernakulam Rural, Aluva seeking for grant of interim

custody of the vehicle in his favour but, was informed by an order

passed by the Drug Disposal Committee that the vehicle is only liable for disposal. The claim of the petitioner for getting interim custody of the vehicle having been declined, the Writ Petition on hand is filed.

4. The Apex Court has held recently 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. The situation being so, this Court finds it appropriate to direct the petitioner to the court having jurisdiction.

5. The Drug Disposal Committee is not empowered to grant release of the vehicle in interim custody in favour of the petitioner and therefore, the relief sought in the Writ Petition is not liable to be granted. In the result, the Writ Petition (Crl.) is disposed of

with a direction to the petitioner to prefer an application before the jurisdictional court under Section 457 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) seeking for getting release of the vehicle in his interim custody. On such

an application being filed, 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 SMA APPENDIX PETITIONER EXHIBITS :- Exhibit P1 TRUE COPY OF THE RC PARTICULARS OF THE CAR BEARING REGN.NO: KL-39-D- 9119. Exhibit P2 TRUE COPY OF FIR NO. 1915/2021 OF PERUMBAVOOR POLICE STATION, ERNAKULAM. Exhibit P3 TRUE COPY OF THE REJECTION ORDER NO. D1(A)-48788/2021/E DATED 25/04/2022 ISSUED BY THE 3RD RESPONDENT WITH TYPED COPY.

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