

Lareesh, vs Union of India,

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Court : Kerala

Decided On : Mar-14-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(Crl.)/353/2021

Appellant : Lareesh,

Respondent : Union of India,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY, THE 14TH DAY OF MARCH 2023 / 23RD PHALGUNA, 1944 WP(CRL.) NO. 353 OF 2021 PETITIONER: LAREESH, AGED 25 YEARS S/O. ABDUL RAHEEM, MADOTH, KOKKALLUR AMSOM DESOM, THAMARASSERY TALUK, BALUSSERY, KOZHIKODE-673612. BY ADVS. K.P.SUDHEER ANJALI MENON RESPONDENTS:

1 UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NEW DELHI-110001. 2 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. 3 STATION HOUSE OFFICER, BALUSSERY POLICE STATION, BALUSSERY,

KOZHIKODE-673612. 4 DRUG DISPOSAL COMMITTEE, KOZHIKODE,
REPRESENTED BY DISTRICT POLICE CHIEF, KOZHIKODE-673001.
BY ADV MANU S., ASG OF INDIA

OTHER PRESENT: PP MAYA ANTHARJANAM THIS WRIT PETITION
(CRIMINAL) HAVING COME UP FOR ADMISSION ON 14.03.2023, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(CrI) No.353 of 2021 2
V.G.ARUN J. ----- W.P.(CrI) No.353 of 2021
----- Dated this the 14th day of March 2023

JUDGMENT

The petitioner's car bearing Registration No. KL-76-B- 1502 was seized in connection with Crime No.480 of 2021 of Balussery Police Station, registered for the offence punishable under Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, Sections 4(2)(d) and 5 of the Kerala Epidemic Diseases Ordinance, 2021 and Section 4(iv) of the Kerala Epidemic Disease Corona Virus Disease (Covid-19) Regulations, 2020. As per the prosecution allegation, 3.130 gms of MDMA was recovered from the possession of the accused, while he was driving petitioner's car. The petitioner is not an accused in the crime.

2. Being the registered owner of the vehicle, the

petitioner submitted a petition under Section 451 of Cr.P.C. seeking interim custody of his vehicle. But the petition was returned as not maintainable since the vehicle was to be forwarded to the 4th respondent as provided under Section 52A

W.P.(CrI) No.353 of 2021 3 of the Act. Thereupon th

dismay, the 4th respondent also refused to accept the application. Hence, this writ petition.

3. The reason for the jurisdictional court not accepting

the petition under Section 451 is presumably based on the Division Bench judgment in *Shajahan v. Inspector of Excise and Ors.* [2019 (5) KHC 401], finding that in view of the procedure prescribed under Section 52A, the courts are denuded of the power to order interim custody of vehicles involved in NDPS crimes. This Court in *Shanil and Ors. v. State of Kerala and Ors.* (2023 SCC OnLine Ker. 1023) has

held that in the light of the Supreme Court decision in

Sainaba v. State of Kerala (2022 (7) KHC (SC)), *Shajahan* (supra) stands impliedly reversed. It is also held that, applications seeking interim custody under Section 457 Cr.P.C. are maintainable, even if the inventory of the vehicle is certified and forwarded to the Drug Disposal Committee. As such, the petitioner's remedy is to approach the jurisdictional court with a petition under Section 457 Cr.P.C.

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The writ petition is accordingly disposed of, permitting the petitioner to file a petition under Section 457 Cr.P.C. If such a petition is filed, the Special Court shall consider the same and take a decision on merits. While taking such decision, the court shall refer to the decision in *Wilson C.C. v. State of Kerala* (2022 (7) KHC 450), the specific case put forth by the petitioner being that the contraband was recovered from the person of the accused and not from the vehicle. Till a decision is taken by the competent court, the 4th respondent shall not sell the petitioner's vehicle, if not already sold.

Sd/- V.G.ARUN JUDGE dpk

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