

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 21ST DAY OF APRIL 2015/1ST VAISAKHA, 1937

CrI.MC.No. 2116 of 2015 ()

**CRL.RP44/2014 OF I ADDL. SESSIONS COURT, KOTTAYAM
CRMP 3511/2014 of J.F.C.M. COURT,ERATTUPETTA
CRIME NO. 2/2014 OF ERATTUPETTA EXCISE RANGE OFFICE , KOTTAYAM**

PETITIONER(S)/CLAIM PETITIONER:

**SADHIQUE, AGED 27 YEARS
S/O.PAREETH, KARAKKADU HOUSE, NADAKKAL KARA
ERATTUPETTA VILLAGE.**

BY ADV. SRI.P.SHAIJAN JOSEPH

RESPONDENTS/COMPLAINANT/STATE:

**EXCISE INSPECTOR.
EXCISE RANGE
ERATTUPETTA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**

R1 BY PUBLIC PROSECUTOR SRI.LEGY N. ELIAS

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21-04-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

CrI.MC.No. 2116 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEUXRE 1: TRUE COPY OF BAIL ORDER IN CMP 3244 (A)/14 DATED 01/09/2014 OF
JFCM COURT, ERATTUPETTA.**

**ANNEXURE 2: TRUE COPY BAIL ORDER IN CMP 3889(A)/14 DATED 29/09/2014 OF JFCM
COURT, ERATTUPETTA.**

**ANNEXURE 3: TRUE COPY OF ORDER IN CMP 3511/14 DATED 30/09/2014 OF
JFCM COURT, ERATTUPETTA.**

**ANNEXURE 4: TRUE COPY OF ORDER IN CRL.R.P. 44/2014 DATED 04/02/2015 OF SESSIONS
COURT, KOTTAYAM.**

RESPONDENT(S)' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

Crl.M.C. No.2116 of 2015

Dated this the 21st day of April, 2015.

O R D E R

The petitioner is the fourth accused in NDPS Crime No.2/2014 of Excise Range, Erattupetta. The prosecution case is that the accused Nos.1 to 3 were selling Ganja in an autorikshaw owned and possessed by the petitioner and when the Excise party came, they ran away. The respondent took custody of the vehicle along with 50 grams of Ganja in it and thereafter the vehicle is being kept idle in the premises of the Erattupetta Police Station. The petitioner filed CMP No.3511/2014 under Section 451 of the Cr.P.C. for getting interim custody of the vehicle. The respondent objected the said application on the allegation that the petitioner is a habitual offender and if the autorikshaw is released to the petitioner he will again commit the very same offence. The legality and propriety of the findings whereby the court below

rejected the application under Section 451 of the Cr.P.C. is under challenge in this CrI.M.C.

2. The learned counsel for the petitioner advanced arguments challenging the findings whereby the court below declined the grant of interim custody.

3. Per contra, the learned Public Prosecutor advanced arguments to justify the denial of the interim custody.

4. Going by the impugned order it is seen that the application for interim custody was dismissed on the sole reason that the petitioner is a habitual offender involved in several crimes. But the particulars of the said offences, in which he was allegedly involved, are not stated in the impugned order. Indisputably, the vehicle is being kept idle in the premises of the police station in a position exposed to sunlight and rain and the vehicle will be ruined, if it is allowed to be kept as such. In the absence of the particulars of the offences, in which the petitioner is said to have involved, he cannot be treated as a habitual offender,

who used the above said autorikshaw for the commission of any other offence. In this analysis, I am of the view that no purpose will be served by keeping the autorikshaw in the police custody in a way subject to speedy and natural decay. The said view is supported by the decision of the Apex Court in *Sunderbhai Ambalal Desai v. State of Gujrat* [AIR (2002) 10 SC 290]. Therefore, I am inclined to grant interim custody of the vehicle to the petitioner subject to the following conditions:

- (1) The petitioner shall furnish Bank Guarantee for the value of the vehicle, which is to be determined by the competent authority.
- (2) The petitioner shall produce the vehicle before the concerned Magistrate's court as and when required.
- (3) In the event of failure to produce the vehicle, the court below is allowed to encash the Bank Guarantee.

This petition is allowed.

Sd/—
(K.HARILAL, JUDGE)

okb.