IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

CRL.MC NO. 5552 OF 2024

CRIME NO.622/2024 OF PALARIVATTOM POLICE STATION, ERNAKULAM

AGAINST THE ORDER/JUDGMENT DATED IN CMP NO.3142 OF 2024 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - IX, ERNAKULAM

PETITIONER/PETITIONER:

NASEER P.M,
AGED 44 YEARS
S/O MUHAMMED BAPPU,PARANGODANPARAMBIL, GOVT. HOSPITAL ROAD,KACHERIPADY, PALLURUTHY P.O, ERNAKULAM, PIN - 682006

BY ADVS.
SAM ISAAC POTHIYIL
S.SURAJA
MUHAMMED SUHAIR C.A
RAMU SUBHASH
KARAN MATHEW
ANANTHAKRISHNAN R.

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031

2 **STATION HOUSE OFFICER,**
PALARIVATTOM POLICE STATION, ERNAKULAM DISTRICT, PIN - 682025

OTHER PRESENT:

SRI.ASHI.M.C. (PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS,J

CRL.MC No. 5552 of 2024

Dated this the 23th day of July, 2024

ORDER

Petitioner's vehicle, bearing registration No.KL.59.7622, was allegedly found dumping septic waste into a public drainage at midnight on 19.05.2024. The offence is alleged to have been detected and the vehicle seized on 19.05.2024. Though petitioner filed an application for grant of interim custody, the same was dismissed by Annexure-A2 order. Thus this petition challenging the aforesaid order.

2. I have heard Sri.Sam Isaac Pothiyil, the learned counsel for the petitioner as well as Sri.Ashi M.C, the learned Public Prosecutor.

3. A Division bench of this Court had in W.P.(C) No.7844/2023 directed that, as a preventive measure, vehicles dumping waste into public properties ought not to be released without getting permission from this Court.

4. In December 2023, the statute relating to the local authorities were amended to incorporate a provision for

confiscation of vehicles involved in dumping waste into public properties. Despite all these stringent conditions, there is still an increase in such nefarious activities and a time has come to incorporate stringent conditions at least when vehicles seized are directed to be handed over on interim custody.

5. In the decision in **State of Karnataka v. K.Krishnan** (2000) 7 SCC 80, the Supreme Court had observed that in serious offences committed under Forest and Wild Life Act, interim custody of vehicles can be granted by imposing conditions like furnishing of bank guarantee. In the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (2002) 10 SCC 283, the Supreme Court has observed the vehicles need not be kept in police custody or other offices, pending trial, as the same may reduce the value of the vehicle and that conditions can be incorporated while ordering release of the vehicle to the person best entitled to.

6. The petitioner is alleged to have committed a very serious crime of dumping septic waste into a public drainage

within the limits Cochin Corporation. The Public Prosecutor upon instructions submitted that the final report has already been filed and that there is every chance that the petitioner may repeat the commission of similar offences, if the vehicle is released to him.

7. Having regard to the aforesaid circumstances and also bearing in mind the decisions in **Sunderbhai Ambalal Desai' case & K.Krishnan's case** (cited supra), I am of the view that though the petitioner has indulged in a very serious crime, which can even result in initiation of confiscation proceedings against the vehicle, no purpose would be achieved by retaining the vehicle in the custody of the Police until then. Appropriate conditions can certainly be imposed while directing release of the vehicle. Considering the seriousness of the offence and the health hazard on the public, stringent conditions ought to be imposed.

8. In the result, the impugned order is set aside and there will be a direction to the Investigating Officer in Crime No.622/2024 of Palarivattom Police Station, to release the vehicle, bearing registration No.KL.59.7622, to the petitioner

on the following conditions :-

(I) Petitioner shall execute a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum to the satisfaction of the Jurisdictional Magistrate and undertake to produce the vehicle before the Court as and when directed.

(II) Petitioner shall furnish a Bank Guarantee for Rs.2,00,000/- [Rupees Two lakhs only] before the Jurisdictional Magistrate.

(III) Petitioner shall not transfer, sublet, lease or sell the vehicle to any person, until conclusion of the criminal case.

(IV) Petitioner shall participate in the trial as well as the confiscation proceedings, if any, initiated.

(V) Petitioner shall not commit similar offences in the future and if such offences are committed, the police will be free to repossess the vehicle and seek encashment of the Bank Guarantee.

The Crl.M.C.is allowed as above.

Sd/-

BECHU KURIAN THOMAS
JUDGE

bng

APPENDIX OF CRL.MC 5552/2024

PETITIONER ANNEXURES

ANNEXURE A1	**THE TRUE COPY OF THE FIR IN CRIME IN CRIME NO. NO 622/2024 OF PALARIVATTOM POLICE STATION, ERNAKULAM DISTRICT,**
ANNEXURE A2	**THE TRUE COPY OF THE ORDER DATED 13.06.2024 IN C.M.P NO 3142/2024 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM, ERNAKULAM**
ANNEXURE A3	**THE TRUE COPY OF THE GOODS PERMIT ISSUED BY THE TRANSPORT DEPARTMENT OF KERALA**