IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

CRL.MC NO. 5624 OF 2024

CRIME NO.463/2024 OF HARIPPAD POLICE STATION, ALAPPUZHA

AGAINST THE ORDER DATED 22.06.2024 IN CMP NO.1246 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST CLASS- I, HARIPAD

PETITIONER/PETITIONER:

SUDHAMANI
AGED 65 YEARS
W/O AJAYAN,
PUTHENPARAMBIL (H)
KIZHAKKEKKARA SOUTH THRIKKUNNAPPUZHA,
ALAPPUZHA DISTRICT, PIN – 690516

BY ADV P.V.SOBHANA

RESPONDENTS/RESPONDENTS:

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

2 **STATION HOUSE OFFICER**
HARIPAD POLICE STATION,
ALAPPUZHA DISTRICT, PIN – 690514

3 **DEPUTY EXCISE COMMISSIONER**
EXCISE DIVISION OFFICE,
EXCISE COMPLEX, IRON BRIDGE P.O. NEAR GENERAL HOSPITAL, ALAPPUZHA, PIN – 688011

BY ADV. ASHI M.C,
PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

Crl.M.C.No.5624 of 2024

Dated this the 22nd day of July, 2024

ORDER

Petitioner is the owner of the vehicle bearing registration No.KL-29-U-4981. The said vehicle was seized on 21.04.2024, on the allegation that it was involved in the commission of an offence under Section 8(1)(2) of the Kerala Abkari Act, 1077 (For short, 'the Act').

2. Prosecution alleges that during police patrolling duty, the accused named in the FIR, along with the second accused attempted to transport one litre of arrack, which is a prohibited article, in a plastic bottle, and thereby committed the offence alleged.

3. Petitioner as the owner of the vehicle and not having been included as an accused, filed C.M.P.No.1246/2024 before the Judicial First Class Magistrate Court-I, Haripad, seeking interim custody of the vehicle under Section 457 Cr.P.C. By the impugned order dated 22.06.2024, the learned Magistrate allowed the application and directed the vehicle to be released to the petitioner on condition. One of the conditions stipulated that a cash security of Rs.5,85,000/- must be furnished before the court. Petitioner is aggrieved by the said condition.

4. I have heard Smt. P.V.Sobhana, the learned counsel for the petitioner and Sri. Ashi.M.C, the learned Public prosecutor.

5. Though the learned counsel for the petitioner vehemently contended that without the vehicle having been used for the commission of an offence, Section 53 of the Act will not have any application, I am of the view that, on a perusal of the contents of the FIR it cannot be held at this stage that the vehicle was not used for commission of the offence. The contention that it could only be the accused who was in possession of the contraband is a contention which cannot be appreciated at this stage of the proceedings, especially in the light of the nature of allegations. Prima facie, there are materials to show that the vehicle was used for the commission of the offence. Contrary conclusions cannot be arrived at this stage of the proceedings, as it requires appreciation of materials after the investigation is concluded.

6. Section 53B of the Act stipulates that, whenever any vehicle used for committing any offence is seized or detained under this Act, and if any court finds that it shall be released temporarily, it shall do so with direction to execute sufficient bond by way of cash security equivalent to the market value of the vehicle. A Division Bench of this Court had, interpreting the aforesaid provision in ***NikhilT.M Vs. Deputy Excise commissioner Kannur & Others*** *[2016 (4) KLT 372]* held that interim custody of the vehicle can be granted without prejudice to the confiscation proceedings on furnishing cash security equivalent to the market value of the vehicle.

7. The learned Magistrate has, in the instant case, after referring to the aforesaid decision and bearing in mind the market value as assessed by the Assistant Executive Engineer, directed the petitioner to furnish a cash security of Rs.5,85,000/- before court.

8. On a perusal of the impugned order and bearing in mind the statutory objective of Section 53B of the Act, I am of the opinion that there is no perversity or irregularity in the impugned order, warranting interference under Section 482 Cr.P.C. Hence, I find no merit in this criminal miscellaneous case, and it is dismissed.

Needless to mention, in case of any change of circumstances, petitioner will be at liberty to approach the learned Magistrate afresh.

Sd/-

BECHU KURIAN THOMAS
JUDGE

Jka/22.07.24.

APPENDIX OF CRL.MC 5624/2024

PETITIONER'S ANNEXURES

Annexure A1	**TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE BEARING REGISTRATION NO. KL-29-U-4981**
Annexure A2	**TRUE COPY OF THE FIR IN CRIME NO.463/2024 OF THE HARIPAD POLICE STATION**
Annexure A3	**TRUE COPY OF THE COMPLAINT DATED 25.04.2024 SUBMITTED BEFORE THE STATION HOUSE OFFICER, THRIKKUNNAPUZHA POLICE STATION**
Annexure A4	**TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT OF COMPLAINT, DATED 25.04.2024 ISSUED FROM THE THRIKKUNNAPUZHA POLICE STATION**
Annexure A5	**TRUE COPY OF THE COMPLAINT DATED 02.05.2024 SUBMITTED BEFORE THE SUPERINTENDENT OF POLICE, ALAPPUZHA**
Annexure A6	**TRUE COPY OF THE PETITION C.M.P. NO.1246/2024, DATED 29.04.2024, ON THE FILES OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HARIPAD, WITHOUT ITS ANNEXURES**
Annexure A7	**CERTIFIED COPY OF THE ORDER DATED 22.06.2024 IN C.M.P. NO.1246/2024 ON THE FILES OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, HARIPAD**