

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 30<sup>TH</sup> DAY OF OCTOBER 2023 / 8TH KARTHIKA, 1945

CRL.MC NO. 8455 OF 2023

CRIME NO.19/2023 OF Trivandrum E.E., Thiruvananthapuram

PETITIONER(S)/ACCUSED NO.4:

SHIBU J.

BY ADVS.

M.J.SANTHOSH

RENJITH B.MARAR

ANTONY PAUL

LAKSHMI.N.KAIMAL

ABHIJITH SREEKUMAR

ARUN POOMULLI

ANAND REMESH

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,

PIN - 682031

BY ADV.

SMT.SREEJA.V, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
30.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**CR**

**P.V.KUNHIKRISHNAN, J.**

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**Crl.M.C.No.8455 of 2023**  
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**Dated this the 30<sup>th</sup> day of October, 2023**

**ORDER**

Petitioner is arrayed as the 4<sup>th</sup> accused in Crime No.19/2023 of Excise Enforcement And Anti-Narcotic Special Squad. The above case is registered alleging offences punishable under Section 8(C), 22(C), 20(b) (ii)(C) of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The prosecution case is that, on 09.07.2023, the petitioner along with other accused was found in possession of 155.480 kgs of ganja and 70.71 grams of MDMA.

3. The petitioner filed an application as Crl.M.P.No.5181/2023 for the certified copy of the

seizure mahazar in Crime No.19/2023 of Excise Enforcement And Anti-Narcotic Special Squad before the Additional Sessions Court-I, Thiruvananthapuram. But the said application was dismissed as per Annexure A1 order. Aggrieved by the same, this Criminal Miscellaneous Case is filed.

4. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

5. Counsel appearing for the petitioner submitted that the petitioner is facing a serious allegation of possessing commercial quantity of ganja and MDMA. In the light of the rigour under Section 37 of the NDPS Act, the accused is entitled for bail only if he could establish that he is not guilty. For the purpose of understanding the case, it is submitted that a copy of the seizure mahazar is necessary. It is also submitted by the counsel that the seizure mahazar is prepared by the public servant during the course of discharging his

duty and the same is a public document falling under Section 74(1)(iii) of the Indian Evidence Act. Therefore, it is submitted that the denial of a copy of the seizure mahazar to the petitioner by the lower court is illegal. The learned Public Prosecutor supported Annexure A1 order.

6. This Court considered the contentions of the petitioner and the Public Prosecutor. First Information Report and the seizure mahazar prepared by the police officers and other officials are contemporaneous records and the same are to be forwarded to the jurisdictional magistrate immediately. Section 102(1) of Cr.P.C says that, any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Section 102(3) says that, every police officer acting under Sub-Section (1) shall

forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Therefore, it is clear that, if any property is seized by a police officer, it should be reported to the learned Magistrate forthwith. Admittedly, the seizure mahazar in this case is forwarded to the court.

7. In **Youth Bar Association of India v. Union of India and Others** [2016 (4) KHC 838] the

Apex Court observed that, an accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C. It will be better to extract the relevant portion of the above judgment:

“12. Having heard learned counsel for the parties, we think it appropriate to record the requisite conclusions and, thereafter, proceed to issue the directions:

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under S.207 of the CrPC.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative / agent / parokar for grant of a certified copy before the concerned Police Officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty - four hours.

(c) Once the First Information Report is forwarded by the Police Station to the concerned Magistrate or any Special Judge, on an application being filed for certified

copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under S.207 of the CrPC.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty - four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty - eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the

said authority. A decision taken by the concerned Police Officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under S.438 of the CrPC.

(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt



of the representation and communicate it to the grieved person.

(i) The competent authority referred to herein above shall constitute the committee, as directed herein - above, within eight weeks from today.

(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused / his authorised representative / parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.”

8. From the above dictum, it is clear that, an accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C. Section 173 of the Cr.P.C deals with the report of the police officer on completion of investigation. Section 207 Cr.P.C says

about the supply to the accused of copy of police report and other documents. As per Section 207(ii), the first information report recorded under Section 154 Cr.P.C is to be supplied to the accused after issue of process at the Section 207 Cr.P.C stage. But the Apex Court in **Youth Bar Association of India's** case (supra) observed that, an accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

9. In **Harendra Rai v. State of Bihar** [2023 KHC 6782], the Apex Court observed that the FIR is a public document defined under Section 74 of the Evidence Act and the accused is entitled to a copy of the same. The relevant portion of above judgment is extracted hereunder:

“81. It is an undisputed position of law that the FIR is a public document defined under S.74 of the Evidence Act. Various High Courts have expressed this view from time to time.

a) In the case of Channappa Andanappa Siddareddy and others v. State (1980 CriLJ 1022), the Karnataka High Court held as follows:

"3. The F. I. R. being a record of the acts of the public officers prepared in discharge of the official duty is a public document as defined under S.74 of the Evidence Act. Under S.76 of the Evidence Act, every public officer having the custody of a public document, which any person has a right to inspect, is bound to give such person on demand a copy of it on payment of the legal fees therefore."

b) The Single Bench of Gujrat High Court, in the case of Jayantibhai Lalubhai Patel v. State of Gujrat (1992 CriLJ 2377), concluded as follows:

"10. From the aforesaid discussions, it clearly appears that whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code. Thus it becomes a public document. Considering (1) the provisions of Art.21 of the Constitution of India, (2) First Information Report is a public document in view of S.74 of the Evidence Act."

c) In the case of Shyam Lal v. State of U.P. And Others (1998 CriLJ 2879), the Division Bench of Allahabad High Court followed the same view.

d) The Division Bench of the Delhi High Court, while dealing with a public interest litigation being Court on its Own Motion through Mr. Ajay Chaudhary v. State

(2011 CriLJ 1347), discussed pronouncements of various High Courts and held that there can be no trace of doubt that FIR is a public document as defined under S.74 of the Evidence Act.

e) Recently, a Single Bench of Chhattisgarh High Court took similar view in the case of Narendra Rajput v. State of Chhattisgarh through Secretary, Department of Home Affairs (Police) and Others (2019 SCC OnLine Chh. 16).

82. This Court endorses the above view and holds that FIR is a public document defined under S.74 of the Evidence Act.”

10. In **Saritha S. Nair v. Union of India and Another** [2022 (4) KLT 848] this Court observed that, the right to obtain a certified copy of the public document presupposes the right to inspect it. This Court also observed that, Section 76 of the Indian Evidence Act clothes any person who has a right to inspect a public document in the custody of a public officer, with a right to obtain on demand a copy thereof on payment of the legal fee.

11. I am of the considered opinion that, once the seizure mahazar is prepared and sent to the court, it is a public document. There is no bar in issuing a certified copy of the seizure mahazar to an accused especially because the same is necessary for him to mould his case at the stage of filing the bail application also.

12. Rule 222 of the Criminal Rules of Practice Kerala, 1982 (for short 'Rule') says that, every application for a copy of a proceeding or document filed in or in the custody of a court shall be presented by the applicant or his pleader and shall set out the name of the applicant, his position, if any, in the proceedings, the name of his pleader, if any, and a description of the proceeding or document of which a copy is required. The only exception for getting the certified copy is stated in Rule 225. Rule 225 says that, copies of correspondence or of proceedings which are

confidential or are not strictly judicial shall not be granted, except under the orders of the court.

13. From the above rule, it is clear that, even copies of correspondence or of proceedings which are confidential or are not strictly judicial documents can be obtained after getting orders from the court. Therefore, the seizure mahazar which is a signed document can be given to the accused on usual terms after payment of necessary fee. The Sessions Court dismissed the application mainly for the reason that, for filing bail application, seizure mahazar is not necessary. Such a stand can not be accepted. As far as an accused is concerned, he has to mould his case at the stage of bail application itself for which the F.I.R and seizure mahazar may be necessary especially when the case alleged is very serious. In this case, the allegation against the petitioner is that, he was found in possession of commercial quantity of ganja and MDMA.

In such circumstances, denial of a copy of the seizure mahazar is illegal.

Therefore, this Criminal Miscellaneous Case is allowed in the following manner:

i. Annexure A1 order is set aside.

ii. Crl.M.P.No.5181/2023 on the file of the Additional Sessions Court-I, Thiruvananthapuram is allowed and a certified copy of the seizure mahazar shall be issued to the petitioner forthwith on payment of necessary fee, in accordance with law.

*Sd/-*

**P.V.KUNHIKRISHNAN  
JUDGE**

**APPENDIX OF CRL.MC 8455/2023**

PETITIONER ANNEXURES

- ANNEXURE A1            THE CERTIFIED COPY OF ORDER IN CRL.  
M.P. NO. 5181/2023 DATED 19/09/2023  
ON THE FILE OF HON'BLE ADDITIONAL  
SESSIONS COURT-I, THIRUVANATHAPURAM
- ANNEXURE A2            THE TRUE COPY OF JUDGMENT IN 2016 (4)  
KHC 838 YOUTH BAR ASSOCIATION OF  
INDIA V. UNION OF INDIA
- ANNEXURE A3            THE TRUE COPY OF JUDGMENT IN SARITHA  
S. NAIR V. UNION OF INDIA 2022 (5)  
KHC 527

RESPONDENTS EXHIBITS        :NIL

//TRUE COPY//    PA TO JUDGE