

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE  
&  
THE HONOURABLE MR. JUSTICE SATHISH NINAN  
&  
THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

Monday, the 19<sup>th</sup> day of February 2024 / 30th Magha, 1945

WA NO. 1304 OF 2022

AGAINST THE JUDGMENT DATED 13.07.2022 IN WP(CrL.) 627/2022 OF THIS COURT  
APPELLANT/PETITIONER:

PRADEEP B, AGED 34 YEARS, S/O DAMODARAN, RESIDING AT PUTHIYAKANDAM,  
ANANDASHRAMAM P.O., KANHANGAD, KASARAGOD DISTRICT, 671531.

BY ADVS. M/S. SURESH KUMAR KODOTH & SUKARNAN

RESPONDENTS/RESPONDENTS:

1. THE DISTRICT DRUG DISPOSAL COMMITTEE REPRESENTED BY ITS  
CHAIRMAN/DISTRICT POLICE CHIEF, KASARGOD, VIDYANAGAR, KASARGOD,  
671123.
2. STATION HOUSE OFFICER, HOSDURG POLICE STATION, HOSDURG, KANHANGAD,  
KERALA, 671315.
3. STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF EXCISE &  
NDPS, THIRUVANANTHAPURAM, 695001.

BY SENIOR GOVERNMENT PLEADER SRI. K.P. HARISH

Prayer for interim relief in the Writ Appeal stating that in the  
circumstances stated in the appeal memorandum, the High Court be pleased  
to issue an interim order directing first respondent to grant interim  
custody of the vehicle bearing No. KL-60-M-7881 to the appellant, upon  
such terms/conditions, pending disposal of proceeding under Section 52A  
of the NDPS Act, to secure the ends of justice.

This Writ Appeal coming on for orders on 19/02/2024, upon perusing  
the appeal memorandum and this Court's dated 22/09/2022, the Court on the  
same day passed the following:

P.T.0

A. MUHAMED MUSTAQUE,  
SATHISH NINAN &  
SHOBA ANNAMMA EAPEN, JJ.

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W. A. No.1304 of 2022

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Dated this the 19<sup>th</sup> day of February, 2024

O R D E R

SATHISH NINAN, J

Whether the jurisdictional special court can exercise powers under Section 457 of the Code of Criminal Procedure (herein after referred to as “Cr.PC”) to order interim custody of a vehicle seized under the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as “the Act”), is the short question posed in this reference.

2. In *Shajahan v. Inspector of Excise and Others 2019 (5) KHC 401*, a Division Bench of this Court had answered the above in the negative. Taking note of the contrary view taken by a Division Bench of the Karnataka High Court in a reference order, another Division Bench of this Court was of the opinion that the issue needs a re-look.

3. We have heard Sri.Suresh Kumar Kodoth, the learned counsel for the appellant and Sri.K.P.Harish, the learned Senior Government Pleader for the respondent.

4. Section 52A of the Act deals with “disposal of drugs, substances and conveyances” seized in relation to commission of an offence under the Act. Section 52A was inserted by Act 2 of 1989 with effect from 29.05.1989. Section 52A(1) was substituted by Act 16 of 2014 with effect from 01.05.2014. As per the substituted provision, the Central Government was required to notify the officer who is to be vested with the powers with regard to disposal of the seized articles. Section 52A includes conveyances along with drugs and other psychotropic substances. Section 2(viii) of the Act defines “conveyance” to include any vehicle. Therefore, the applicability of Section 52A of the Act to vehicles seized in relation to an offence under the Act cannot be

disputed.

5. Prior to the introduction of Section 52A as amended in 2014, the power of the Special Court to grant interim custody of the vehicle was not in issue. Whether the introduction of Section 52A in the Act denuded the Special Court of its power to order interim custody of the vehicle under Section 457 of the Cr.PC, is the question. In *Shajahan's* case(supra), the Division Bench was of the view that, it did.

6. Section 52A of the Act reads thus:-

*“52-A. Disposal of seized narcotic drugs and psychotropic substances.—(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.*

*(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of-*

*(a) certifying the correctness of the inventory so prepared; or*

*(b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or*

*(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.*

*(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.*

*(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”*

In terms of Section 52A(1), the Central Government issued a Notification G.S.R. 38(E) dated 16<sup>th</sup> January, 2015, (hereinafter referred to as “the Notification”) constituting a Drug Disposal Committee to exercise the powers of disposal of seized items.

7. A reading of Section 52A indicates that, the power conferred thereunder on the Drug Disposal Committee is one for the disposal of the article. Section 52A(2) requires the officer to make an application to the Magistrate for, certification as mentioned in 52A(2)(a), taking photographs of the articles in the presence of the Magistrate and certifying such photographs as true as stated in 52A(2) (b), or to allow to draw representative samples of such drugs or substances in the presence of the Magistrate and for certifying the correctness of the list of samples so drawn as provided for in 52A(2)(c). Thus, Section 52A of the Act stipulates only the preparation

of inventory and an application before the Magistrate for the purposes mentioned in 52A(2). Clause 4(2) of the Notification requires the seized items to be send to the godown. Clause 4 is titled, "Manner of disposal". Clause 4(2) reads thus,

*"After the Magistrate allows the application under sub-section (3) of Section 52A of the said Act, the officer mentioned in subparagraph (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the seized items to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the aforesaid officer shall send a copy of the details along with the items seized to the officer-in-charge of the godown."*

Clause 9(5) of the Notification deals with the mode of disposal of the seized articles including conveyances. clause 9(5)(e) of the Notification reads thus:-

*"(e) seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee."*

There is no provision in the Act enabling the Drug Disposal Committee to order interim release of the vehicle/conveyance.

8. Sections 60 to 63 of the Act provide for confiscation of the articles including conveyances seized under the Act. Section 60(3) of the Act stipulates that the vehicle involved in an offence shall be liable to confiscation only if its owner fails to prove that the vehicle was used for the purpose without his knowledge and that all reasonable precautions were taken against such use. Section 63(1) of the Act provides for ordering confiscation after adjudicating whether the article is liable to confiscation under Sections 60, 61, or 62 as the case may be. An opportunity is granted to the owner of the vehicle to prove that the vehicle was used without his knowledge and that he had taken all reasonable precautions against such use. There is no provision in the Act expressly



providing for the interim release of a vehicle alleged to be involved in an offence under the Act.

9. Leaving the seized vehicle idle and exposed to sun, rain and the vagaries of nature till the completion of the legal formalities, will only result in deterioration of the vehicle and its value. By keeping the vehicle idle and unattended it becomes scrap by passage of time. When ultimately the vehicle is ordered to be disposed of, it will hardly fetch any value. This will not benefit anybody including the State exchequer. In *Sunderbhai Ambalal Desai v. State of Gujarat (AIR 2003 SC 638)*, the Apex Court underlined the necessity to pass orders of interim custody without keeping the vehicle idle and resulting in deterioration in its value. The Apex Court held :-

*“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well*

*as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”*

10. Section 36-C of the Act makes applicable the provisions of Cr.PC to the proceedings before the Special Court under the Act. The Section reads thus:-

*“36-C. Application of Code to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.”*

Section 51 of the Act makes the provisions of Cr.PC applicable to warrants, arrest, searches and seizures made under the Act, to the extent they are not inconsistent with its provisions. Section 457 of the Cr.PC deals with grant of interim custody. There is no reason to hold that the Section does not apply to proceedings before the special court.

11. Thus, we are of the opinion that, the Special Court is entitled to invoke Section 457 Cr.PC for ordering interim custody of the vehicle.

12. In the judgment of the Apex Court in *Union of India v. Mohanlal and Another 2016 (3) SCC 379*, which was relied on by the Division Bench of this Court in *Shajahan's case supra*, the question of interim custody was not the subject matter of consideration. In *Sainaba v. State of Kerala 2022 (7) KHC 273*, the Apex Court held that interim custody of a vehicle involved under the NDPS Act could be ordered. We also notice the similar view taken by a Division Bench of the Karnataka High Court in *Rathnamma v. State represented by PSI Channagiri Police Station Davanagere (Criminal Petition No. 3571/2021)*. Similar view has been taken by learned single Judges of Allahabad High Court in *Shams Tavrej v. Union of India 2023 SCC OnLine All 1154* and *Rajdhari Yadav v. State of U.P 2022 SCC OnLine All 583* and a learned single Judge of Gauhati High Court in *Union of*

***India v. Tejinder Singh 2023 SCC OnLine Gau 729.***

Thus we hold that, the jurisdictional Special Court under the Act has the power to consider the grant of interim custody of vehicles seized under the Act, by invoking the powers under Section 457 of the Cr.P.C. The reference is answered accordingly.



**Sd/-  
A. MUHAMED MUSTAQUE  
JUDGE**

**Sd/-  
SATHISH NINAN  
JUDGE**

**Sd/-  
SHOBA ANNAMMA EAPEN  
JUDGE**

kns/-