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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

WP(CRL.) NO. 1189 OF 2022

(CRIME NO.1135 OF 2021 OF ERUMAPETTY POLICE STATION)

PETITIONER/S:

SHANIL,
AGED 32 YEARS
S/O AYYAPPAN, NADUVIL PURAKKAL HOUSE,
KUTTENCHERY PO, THRISSUR - 680584 .
BY ADVS.
M.T.SURESHKUMAR
SREELAKSHMI SABU

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM 682031 .
- 2 SUB INSPECTOR OF POLICE,
ERUMAPETTY POLICE STATION, CHAVAKKAD,
VADAKKANCHERRY ROAD, THALAPALLY - 680584.

OTHER PRESENT:

PP M.C.ASHI

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 07.02.2023, ALONG WITH W.P.(CRL.)1241/2022 AND CONNECTED
CASES, THE COURT ON 13.02.2023 DELIVERED THE FOLLOWING:

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

WP (CRL.) NO. 1241 OF 2022

(CRIME NO.22 OF 2019 OF KUZHALMANNAM EXCISE RANGE OFFICE, PALAKKAD)

PETITIONER/S:

JESHEER.K.B
AGED 34 YEARS
KUNNATHPEDIKAIL (HOUSE), CHIRAMANAMGAD (P.O.),
KUDAKKALLU, KUNNAMKULAM, THRISSUR,, PIN - 680604
BY ADVS.
V.H.JASMINE
JESWIN P.VARGHESE
SHIJI P.S.
THASNIMOL T.S.

RESPONDENT/S:

- 1 THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM -, PIN - 682031
- 2 THE EXCISE RANGE INSPECTOR
KUZHALMANNAM, KUZHALMANNAM.P.O., PALAKKAD -,
PIN - 678702
- 3 THE CHAIRMAN, NARCOTICS DRUGS AND PSYCHOTROPIC
SUBSTANCES AND CONVEYANCE DISPOSAL COMMITTEE
(EXCISE DEPARTMENT) AND DEPUTY EXCISE
COMMISSIONER, PALAKKAD, CIVIL STATION, PALAKKAD,
PIN - 678001

OTHER PRESENT:

PP M.C.ASHI

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 07.02.2023, ALONG WITH W.P.(CRL.)1189/2022 AND CONNECTED
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Crl.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

WP(CRL.) NO. 29 OF 2023

**(ORDER IN CMP 2282/2022 OF JUDICIAL MAGISTRATE OF FIRST
CLASS, (MUNSIFF MAGISTRATE COURT), ADIMALI**

PETITIONER/S:

TINS XAVIER
AGED 27 YEARS
S/O XAVIOR, VETTICKAPPILLIL HOUSE, KULAPARACHAL
KARA, RAJAKUMARI P.O., UDUMPANCHOLA IDUKK., PIN
- 685619

BY ADVS.
BASIL CHANDY VAVACHAN
GEORGIE SIMON
CHARUTHA BHAIJU
CHANDHANA BHAIJU
BASIL SAJAN
BASIL SCARIA

RESPONDENT/S:

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

OTHER PRESENT:

PP M.C.ASHI

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

WP(CRL.) NO. 83 OF 2023

**ORDER IN CMP 984/2022 OF SPECIAL COURT (NDPS ACT
CASES), VADAKARA**

PETITIONER/S:

SARATH
AGED 27 YEARS
S/O JAISON, PUTHIYEDATH HOUSE, MULLERIKKAL,
PERAVOOR, IRITTY TALUK, KANNUR, PIN - 670703
BY ADVS.
BASIL CHANDY VAVACHAN
CHARUTHA BHAIJU
GEORGIE SIMON
CHANDHANA BHAIJU
BASIL SAJAN
BASIL SCARIA

RESPONDENT/S:

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

OTHER PRESENT:

PP M.C.ASHI

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
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CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

CRL.MC NO. 8820 OF 2022

**(CRIME NO.17 OF 2022 OF NILAMBUR EXCISE RANGE OFFICE,
MALAPPURAM)**

PETITIONER/S:

MUHAMMED RAFI
AGED 30 YEARS
S/O ABDUL SALAM, ARAKKALAKATH HOUSE, KODAVANGAD
P.O, KIZHUPARAMBU, MALAPPURAM DISTRICT,, PIN -
673639
BY ADV R.RANJITH (MANJERI)

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 THE EXCISE RANGE OFFICER
NILAMBUR EXCISE STATION, MALAPPURAM DISTRICT.,
PIN - 679329
- 3 THE CHAIRMAN
THE DRUG DISPOSAL COMMITTEE, CIVIL STATION,
MALAPPURAM DISTRICT., PIN - 676505

OTHER PRESENT:

PP M.C.ASHI; PP MAYA ANTHARJANAM

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
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Crl.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

CRL.MC NO. 9193 OF 2022

ORDER IN CRMC 2440/2022 OF I ADDITIONAL SESSIONS COURT-I,

PALAKKAD DIVISION

PETITIONER/S:

ABDUL KHADER
AGED 52 YEARS
S/O. HASSAN D, KUNNATH HOUSE, THRITHQALA P O,
ULLANNR, PALAKKA DISTRICT ., PIN - 679534
BY ADV T.H.ARAVIND

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 EXCISE ENFORCEMENT AND NARSCOTIC SPECIAL SQUAD.
REP. BY CIRCLE INSPECTOR TOWN BUS STAND,
MUNISCIPAL COMPLEX, PALAKKAD, PIN - 678001

OTHER PRESENT:

PP M.C.ASHI

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

CRL.MC NO. 9255 OF 2022

ORDER IN CRMP 4232/2022 OF SESSIONS COURT, ALAPPUZHA

PETITIONER/S:

JIBIN
AGED 36 YEARS
S/O ESAPPAN, RESIDING AT CHETTIKADU VEEDU,
PANAVALLY PANCHAYATH, CHERTHALA TALUK,
ALAPPUZHA DISTRICT,, PIN - 688526
BY ADVS.
J.R.PREM NAVAZ
SUMEEN S.

RESPONDENT/S:

STATE OF KERALA
REPRESENTED PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, KOCHIN, PIN - 682031
BY ADV PUBLIC PROSECUTOR

OTHER PRESENT:

PP M.C.ASHI

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

CRL.MC NO. 176 OF 2023

CRL.MP 796/2022 OF THE SESSIONS COURT, THIRRSUR

PETITIONER/S:

ASHIQUE P M
AGED 29 YEARS
PUTHUVALPURAYIDAM HOUSE , EDAMUCK, KANDAMKULAM
P.O., METHALA, KODUNGALLUR TALUK, THRISSUR, PIN
- 680669

BY ADVS.
PRABHU K.N.
MANUMON A.

RESPONDENT/S:

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

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 07.02.2023, ALONG WITH W.P.(CRL.)1241/2022 AND CONNECTED
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

CRL.MC NO. 271 OF 2023

CRIME NO.34 OF 2022 OF KANNUR EXCISE RANGE OFFICE, KANNUR

PETITIONER/S:

RAHOOF K.P
AGED 25 YEARS
S/OABDUL SALAM P.K, ZURUR MANZIL, PARIYARAM,
P.O, KOLARI, CHAVASSERY, MATTANNUR, KANNUR
DISTRICT, PIN - 670702

BY ADVS.

K.ANIL KUMAR (CHUNAKKARA)
ANILKUMAR V. (VAZHARAMBIL)

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA ., PIN - 682031
- 2 THE EXCISE INSPECTOR
KANNUR RANGE, KANNUR DISTRICT, PIN - 670001

OTHER PRESENT:

PP M.C.ASHI

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944

CRL.MC NO. 323 OF 2023

CRL.MP NO.3045/2022 OF THE ADDITIONAL SESSIONS COURT-1,

THIRUVANANTHAPURAM

PETITIONER/S:

AMAL
AGED 31 YEARS
S/O T. SUGATHAN, 180 A, SM NIVAS, UDHAYAPURAM,
KATTAYIKONAM, P.O. AYIROOPARA,
THIRUVANANTHAPURM, PIN - 695584
BY ADVS.
ABDUL RAOOF PALLIPATH
K.R.AVINASH (KUNNATH)
PRAJIT RATNAKARAN

RESPONDENT/S:

THE STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICER,
VENJARAMOODU POLICE STATION, THIRUVANANTHAPURAM
DISTRICT THROUGH PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM, PIN - 682031
BY ADV PUBLIC PROSECUTOR

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
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JUDGMENT

Dated this the 13th day of February, 2023

**(W.P. (CrI) Nos.1189 & 1241 of 2022, 29 & 83 of 2023,
CrI.M.C Nos.8820, 9193 & 9255 of 2022 and 176, 271 & 323
of 2023)**

The alarming proportion at which the menace of drugs was growing in our country compelled the Supreme Court to make the following observations in **Union of India v Mohanlal and another [(2016) 3 SCC 379]**;

"26. The menace of drugs in this country, as observed earlier has alarming dimensions and proportions. Studies based on conferences and seminars have very often shown that the menace is deep rooted not only because drug lords have the money power and transnational links but also because the enforcement agencies like the police and at times politicians in power help them in carrying on what is known to be a money

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spinning and flourishing trade. We only hope that the failure of the Central Government agencies and the State Governments in providing what is the bare minimum in terms of infrastructure required to arrest the growing menace and prevent pilferage and re-circulation of drugs back into the market is not on account of any unholy connect between the drug traffickers and the enforcement agencies. We would comfort ourselves by presuming them to be relatable only to apathy and indifference and hope that the system does not get corrupted by continued neglect lest all hopes are lost in the fight against drug menace which are eating into the vitals of our society. It is in that spirit that we deem it necessary to issue appropriate directions to the Central Government agencies and to the States to set up adequate storage facilities with effective supervisory and regulatory controls as prescribed in Notification No. 1/89."

Going by the available statistics, the words of caution seem to have fallen on deaf ears. The menace has grown manifold in the past seven years

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and God's own country is vying for a predominant position among the States.

2. For the purpose of deciding the issue involved in these cases the focus has to be shifted to another aspect dealt with in **Mohanlal** (supra) viz; the procedure for seizure, sampling, safe keeping and disposal of narcotic drugs and psychotropic and controlled substances and conveyances in the light of Section 52A incorporated through an amendment in 2014. After detailed analysis, the following directions were issued in **Mohanlal**;

"31. To sum up we direct as under:

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application

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under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989

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to ensure proper security against theft, pilferage or replacement of the seized drugs.

31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading "disposal of drugs".

The introduction of Section 52A and the above directions gave rise to the question whether the Special Court or the Magistrate Court can order interim release of the vehicles seized in connection with NDPS crimes by exercising the power under Sections 451 or 457 of the Code of

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Criminal Procedure. A Division Bench of this Court in **Shajahan v. Inspector of Excise and others [2019 (5) KHC 401]** answered the question to a limited extent by holding that the statutory provisions in the NDPS Act denude the Magistrates of their power to consider a claim under Section 451 of Cr.P.C.

3. The petitioners herein are owners of vehicles that were seized in connection with crimes registered under the NDPS Act. Except in three cases, the petitioners are not arrayed as accused in the crimes registered. In most of the cases, their applications under Sections 451 or 457 Cr.P.C, seeking interim custody of the vehicles are rejected following **Shajahan** (*supra*). In some of the cases, the petitioners are directed to approach the Drug Disposal Committee.

4. Heard.

5. The orders of rejection and the

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direction to approach the Drugs disposal Committee are assailed on various grounds. The thrust of the argument is that, in **Mohanlal** (*supra*) the Apex Court had dealt with only the manner in which Section 52A of the Act is to be given effect and had not dealt with the power of the jurisdictional courts to grant interim custody of the vehicles under Sections 451 and 457 of the Code. Hence, the Division Bench committed a mistake in holding that the Magistrates Courts are denuded of the power to order interim custody of vehicles. It is pointed out that the correctness of **Shajahan** (*supra*) was subsequently doubted by another Division Bench and the question whether Section 52A takes away the bar for interim release vested with the Special Court under Section 452(1) and 457 has been referred to a Full Bench. Even otherwise, **Shajahan** (*supra*) is no longer good law in view of

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the Apex Court decision in **Sainaba v. State of Kerala [2022 (7) KHC 273]**.

6. To bolster the contention that, provisions of the Code are applicable at all stages of the proceedings under the Act, reference is made to Section 36C, making the provisions of the Code applicable to proceedings before the Special Court and Section 51, which makes the provisions of the Code applicable to warrants, arrests, searches and seizures. Attention is drawn to Sections 60(3) of the Act, dealing with confiscation of conveyances to contend that, Section 60(3) provides for confiscation of a conveyance only in the event of the owner being unable to prove that the conveyance was used without his knowledge or connivance and that, the person in charge of the conveyance and that had taken all reasonable precautions against misuse. Moreover, going by

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Section 63, the question of confiscation would arise only after conclusion of the trial. Therefore, the Drug Disposal Committee under Section 52A can dispose of the conveyance only after the trial is concluded. Judgments of other High Courts, releasing seized vehicles on interim custody under Section 451 or Section 457 of the Code are relied on to contend that, the directions in **Mohanlal** (*supra*), if understood properly, does not create any embargo against exercise of power under Sections 451 and 457. Relying on the decision in **Smart Logistics v. State of Kerala [2020 (5) KLT 298]** it is contended that, merely for reason of the contraband having been recovered from personal possession of the driver or passengers, the vehicle cannot be termed as 'conveyance', unless the vehicle is found to have been used in carrying the contraband. It is submitted that, in most of the

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cases, the contraband is recovered from the driver or passenger. Hence, the vehicle cannot be termed as conveyance and no action need be taken as per Section 52A or the notifications.

7. According to the learned Public Prosecutor, the contentions cannot countenanced in view of the separate procedure prescribed in Section 52A for disposal of seized conveyances, and the direction in Mohanlal (*supra*), as explained in Shajahan (*supra*). In Smart Logistics (*supra*) also, this Court held the power to dispose of seized vehicles to be vested exclusively with the Drug Disposal Committee. It is contended that, Sainaba v State of Kerala [2022 (7) KHC 273] was rendered on the facts and circumstances of that case and cannot be held to be of general application. Moreover, the interim release of seized vehicles may result in the crimes being repeated.

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8. It is an irrefragable fact that the exponential increase in crimes under the NDPS Act has resulted in innumerable vehicles being seized. In this context, the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** [(2022) 10 SCC 283] assumes relevance. Therein, referring to Sections 451 and 457 Cr.PC, the Apex Court made the following observations;

“8. The question of proper custody of the seized article is raised in a number of matters. In Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358 : 1977 SCC (Cri) 598] this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

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“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court

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and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

Even in **Mohanlal** (supra), the Apex Court had noticed that the police station premises are bursting at the seams with seized narcotic substances and conveyances. In the above context

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the court had issued the directions in terms of Section 52A. No doubt, relying on **Mohanlal** (*supra*), the Division Bench in **Shajahan** (*supra*) has held that the Magistrates are denuded of the power under Section 451 Cr.P.C, by reason of Section 52A and the directions in **Mohanlal** (*supra*).

9. Here, it is pertinent to note that Sections 60(3) and first proviso to Section 63(2) contemplates an opportunity of hearing to the owner of the vehicle before confiscation. Further, confiscation will also depend upon the outcome of the trial. This Court, in **Smart Logistics** (*supra*), held the principles of natural justice to be inbuilt in Section 52A. Hence, before disposing of the vehicles, the Drug Disposal Committee should afford an opportunity of hearing to the owner. The question therefore is whether the seized vehicles should be left

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idle till the legal formalities are completed, resulting in the vehicles getting damaged and huge public space being taken up.

10. Yet another relevant aspect is that, by virtue of Section 36C of the Act, the provisions of the Code are applicable to proceedings before the Special Court. Further, Section 51 makes the provisions of the Code applicable with respect to warrants and arrests, searches and seizures, insofar as they are not inconsistent with the provisions of the Act. Going by Section 60(3), a conveyance can be confiscated only if the owner fails to convince the court that the vehicle was so used without the knowledge of the owner, his agent or the person in charge and that each of them had taken all reasonable precautions against such use. From a conjoint reading of the above provisions, it is evident that Section 52A, dealing with only disposal of contraband, their

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packages and conveyances cannot have any impact on power of the jurisdictional court to grant interim custody of vehicles. The Drug Disposal Committees are not seen empowered to consider the question whether the vehicle is 'conveyance' used in transporting the contraband or whether the vehicle was put to such use, in spite of the owner or agent having taken all precautions to prevent it.

11. Although, in **Shajahan** (*supra*), this Court held the Magistrates to be denuded of the power to grant interim custody under Section 451 Cr.P.C, that decision is impliedly reversed by the Supreme Court in **Sainaba v State of Kerala [2022 (7) KHC 273]**. To summarise, in **Sainaba v State of Kerala and another [2022 KHC 917]**, a learned Single Judge of this Court held that the Special Court is not empowered to exercise jurisdiction under Section 451 to release a

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vehicle involved in an offence under the NDPS Act on interim custody. That order was reversed by the Supreme Court in **Sainaba v State of Kerala [2022 (7) KHC 273]**. Being contextually relevant, paragraphs 5 to 8 of the judgment is extracted hereunder;

“5. It has been opined by the High Court that the Court is not empowered to exercise the jurisdiction under Section 451 of the Code of Criminal Procedure to release a vehicle involved under NDPS Act in interim custody.

6. The appellant has urged inter alia that as per Section 36-C read with Section 51 of the NDPS Act, Criminal Procedure Code would be applicable for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the

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offence as alleged by the prosecution nor had knowledge of the alleged transaction.

7. Learned counsel seeks to rely on the judgment of this Court in Sunderbhai Ambalal Desai v. State of Gujarat - 2003 (2) KLT 1089 (SC) = (2002) 10 SCC 283 opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.

8. On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court."

A careful reading of the above paragraphs makes it clear that the appeal was allowed and

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direction to release the vehicle issued, after taking note of the legal provisions, viz, Section 36C r/w 51 of the NDPS Act and Section 451 Cr.P.C. As such, there is an implied reversal of the dictum in **Shajahan** (*supra*) by virtue of Article 141 of the Constitution of India. I also take note of the judgment in **Pradeep B. v District Drug Disposal Committee and others (WA No.1304/2022 of High Court of Kerala)**, wherein, a Division Bench headed by the Chief Justice expressed the opinion that **Shajahan** (*supra*) requires reconsideration and directed a Full Bench to be constituted.

12. Having found the jurisdictional courts to be having the power to grant interim custody, the ancillary question is whether such power is to be exercised under Section 451 or 457 of the Code. Section 451 will be applicable when a property, which includes seized vehicles, is

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produced before a criminal court during inquiry or trial. As regards conveyances seized in connection with offences under the NDPS Act, Section 52A only provides for preparation of inventory containing details of the conveyance relevant for its identification and the making of an application to the Magistrate for certifying the correctness of the inventory. The seized vehicles are not produced before the Magistrate, upon which alone an order for interim custody under Section 451 can be issued. On the other hand, the power under Section 457 can be exercised with respect to a property, which is not produced before the court, but the seizure of which is reported. The above discussion leads me to the conclusion that the jurisdictional courts have the power to grant interim custody under Section 457 Cr.P.C, irrespective of the procedure for disposal stipulated in Section 52A of the

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Act.

13. I refrain from delving into the question whether the seized vehicles could be termed as 'conveyance' used in carrying contraband, as it is for the jurisdictional court to decide that aspect depending on the facts of each case. As rightly pointed out by the learned Public Prosecutor, the complicity or otherwise of the owner, stipulated in Section 60(3), is also an aspect which the jurisdictional court can consider.

In the result, the CrI.M.Cs and writ petitions, except W.P.(CrI) No.1189 of 2022, are disposed of permitting the petitioners to submit applications under Section 457 Cr.P.C, seeking interim custody of the vehicles. On such applications being filed, the Special Courts and jurisdictional Magistrate courts, as the case may be, shall consider the applications on merits and

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pass reasoned orders thereon, *de hors* dismissal of earlier applications.

W.P. (CrI) No.1189 of 2022

This writ petition is being dealt with separately in view of the peculiar facts involved. Here, the specific case of the petitioner is that a friend had borrowed his vehicle and left it unlocked on the side of the road. After the petitioner's friend had left, the accused got into the vehicle and started smoking ganja beedi. The police apprehended the accused, and on search, found 5 grams of ganja on the dashboard of the vehicle. Thereupon, crime was registered and the car seized. On completion of investigation, Ext.P3 final report was filed on 30.10.2021 and the case taken on the files of the Judicial First Class Magistrate Court, Wadakkanchery as C.C.No.1796 of 2021. The

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petitioner moved an application seeking interim custody under Section 451, but the same was dismissed as per Ext.P5, relying on **Shajahan** (*supra*). Subsequently, the case was disposed of by imposing a fine of Rs.2000/- on the accused.

2. Learned Counsel for the petitioner contended that since the accused were charged for the offence of Section 27 alone, the question of seizing the vehicle terming it as a 'conveyance' does not arise.

3. I find the submission to be well founded, going by the plain meaning of Section 27 extracted hereunder;

*"27. Punishment for consumption of any narcotic drug or psychotropic substance.—
Whoever, consumes any narcotic drug or psychotropic substance shall be punishable,—
(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by*

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notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and (b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both."

As contended, Section 27 deals with only consumption of drug or narcotic substances. By mere reason of such consumption being from inside a vehicle, the vehicle cannot be termed as a 'conveyance' used in transportation of the contraband. As such there is no justification in having seized the petitioner's vehicle for reason of the accused having smoked or consumed ganja, while sitting inside the vehicle. Any other interpretation may lead to the situation like the one under consideration, where the accused are let off with a fine of Rs.2000/- and

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the vehicle of an innocent owner is left to rot. The instant is a case where the vehicle was seized on 15.10.2021 and has been lying in the open for more than one year. I fail to understand as to why the vehicle should be detained, after the case itself having ended. Hence, the Judicial First Class Magistrate, Wadakkanchery is directed to pass appropriate orders for ensuring release of the vehicle bearing registration No.KL 48 N 8816 to the owners' custody.

Sd/-

V . G . ARUN
JUDGE

Scl/

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APPENDIX OF WP (CRL.) 1189/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE RC DETAILS OF KL 48 N 8816 OBTAINED THROUGH PARIVAHAN WEBSITE OF MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, GOVERNMENT OF INDIA.
- Exhibit P2 TRUE COPY OF THE FIR IN CRIME NO. 1135/2021 DATED 15.10.2021 OF ERUMAPETTY POLICE STATION.
- Exhibit P3 TRUE COPY OF THE FINAL REPORT DATED 30.10.2021 IN CRIME NO. 1135 OF 2021 OF ERUMAPETTY POLICE STATION.
- Exhibit P4 TRUE COPY OF THE CMP NO. 2896 OF 2021 IN CRIME NO. 1135 OF 2021 OF ERUMAPETTY POLICE STATION.
- Exhibit P5 TRUE COPY OF THE ORDER DATED 8.12.2021 IN CRL.M.P NO. 2896/2021 IN CRIME NO. 1135/2021 OF ERUMAPETTY POLICE STATION ON THE FILE OF JUDICIAL MAGISTRATE OF 1ST CLASS, WADAKKANCHERY, THRISSUR DISTRICT.
- Exhibit P6 TRUE COPY OF THE E-COURT STATUS OF C C NO. 1796 OF 2021 ON THE FILE OF HONOURABLE JUDICIAL FIRST-CLASS MAGISTRATE COURT, WADAKKANCHERY.

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF WP (CRL.) 1241/2022

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF CRIME AND OCCURRENCE REPORT DATED 17.10.2019 IN CRIME NO.22/2019 OF KUZHALMANNAM EXCISE RANGE, PALAKKAD DISTRICT
- Exhibit P2 CERTIFIED COPY OF THE ORDER DATED 13.12.2019 IN CRL.M.P.NO.3944/2019 OF THE LEARNED SESSION'S COURT, PALAKKAD
- Exhibit P3 TRUE COPY OF THE ORDER DATED 6.10.2020 IN CRL.M.C. NO.2350/2020 OF THIS HON'BLE COURT
- Exhibit P4 TRUE COPY OF THE REPRESENTATION DATED 13.10.2020 SUBMITTED BY PETITIONER BEFORE THE DEPUTY EXCISE COMMISSIONER, DRUG DISPOSAL COMMITTEE, EXCISE OFFICE, CIVIL STATION, PALAKKAD.
- Exhibit P5 TRUE COPY OF THE NOTICE NO. P.3-6336/2020 DATED 20.11.2020 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- Exhibit P6 TRUE COPY OF THE ORDER NO.P.3-6336/2020 DATED 4.12.2020 OF THE CHAIRMAN, NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES AND CONVEYANCE DISPOSAL COMMITTEE (EXCISE DEPARTMENT) AND DEPUTY EXCISE COMMISSIONER, PALAKKAD
- Exhibit P7 A TRUE COPY OF THE NOTIFICATION VIDES, GSR 38(E) DATED 16-1-2015
- Exhibit P8 A TRUE COPY OF THE RC BOOK OF THE VEHICLE BEARING REGISTRATION. NO. KL-48 H- 6593, MARUTI WAGONR IDENTIFYING THE PETITIONER AS THE OWNER OF THE VEHICLE

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF WP (CRL.) 29/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF CERTIFICATE OF REGISTRATION OF MOTOR CYCLE BEARING REGISTRATION NO. KL 69 C 8332.
- Exhibit P2 THE TRUE COPY OF FIR IN CRIME 444/2022 OF RAJAKKAD POLICE STATION DATED 23/05/2022.
- Exhibit P3 THE TRUE COPY OF SEIZURE MAHAZAR IN CRIME 444/2022 OF RAJAKKAD POLICE STATION DATED 20/07/2022.
- Exhibit P4 THE TRUE COPY OF FINAL REPORT IN CRIME 444/2022 OF RAJAKKAD POLICE STATION DATED 07/08/2022.
- Exhibit P5 THE TRUE COPY OF ORDER DATED 23/1 L/2022 PASSED BY THE HONOURABLE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS, ADIMALY IN CMP 2282/2022 IN CC NO. 1103/2022.

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF WP (CRL.) 83/2023

PETITIONER EXHIBITS

Exhibit P1	THE TRUE COPY OF CERTIFICATE OF REGISTRATION OF MOTOR CYCLE BEARING REGISTRATION NO. KL 78 B 6215.
Exhibit P2	THE TRUE COPY OF FIR IN CRIME 507/2022 O F MUZHAKKUNNU POLICE STATION, KANOOR DATED 25/08/2022.
Exhibit P3	THE TRUE COPY OF ORDER DATED 12/01/2023 PASSED BY THE HONOURABLE COURT OF THE SPECIAL JUDGE (N.D.P.S. ACT CASES), VATAKARA IN CMP 984/2022 IN CRIME NO.507/2022 OF MUZHAKKUNNU POLICE STATION, KANOOR BEFORE HONOURABLE COURT OF THE SPECIAL JUDGE (N.D.P.S. ACT CASES), VATAKARA.

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CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF CRL.MC 8820/2022

PETITIONER ANNEXURES

Annexure A TRUE COPY OF THE REPORT FILED IN CRL.
M.P. NO. 1401/2022 OF THE SPECIAL
COURT FOR SC/ST (POA) ACT & NDPS ACT
CASES, MANJERI, DATED 3/10/2022

Annexure B TRUE COPY OF THE ORDER IN CRL. M.P.
NO. 1401/2022 OF THE SPECIAL COURT FOR
SC/ST (POA) ACT & NDPS ACT CASES,
MANJERI, DATED 10/10/2022

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF CRL.MC 9193/2022

PETITIONER ANNEXURES

Annexure A	TRUE COPY OF OCCURANCE REPORT OF EXCISE CRIME NO.69/2020 PALAQKAD EXCISE ENFORCEMENT & ANTI-NARCOTICS SPECIAL SQUAD DATED 23/6/2021
Annexure B	CERTIFIED COPY OF ORDER DATED 12/8/2022 IN CRIMINAL M C NO.2440/2022 OF THE ADDITIONAL SESSIONS JUDGE - PALAKKAD.

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF CRL.MC 9255/2022

PETITIONER ANNEXURES

- Annexure A1 THE CITIZEN COPY OF THE FIR IN CRIME
NO: 539 OF 2022 OF POOCHAKKAL POLICE
STATION, ALAPPUZHA DISTRICT
- Annexure A2 THE TRUE COPY OF THE REMAND REPORT IN
CRIME NO: 539 OF 2022 OF POOCHAKKAL
POLICE, ALAPPUZHA DISTRICT
- Annexure A3 THE TRUE COPY OF THE SEIZURE MAHAZAR
IN CRIME NO: 539 OF 2022 OF POOCHAKKAL
POLICE, ALAPPUZHA DISTRICT
- Annexure A4 THE TRUE COPY OF THE ORDER DATED
03.11.2022 IN CRL.M.P. NO: 4232 OF
2022 PASSED BY THE COURT OF SESSIONS
JUDGE ALAPPUZHA

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF CRL.MC 176/2023

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE REGISTRATION
CERTIFICATE OF THE MOTORBIKE BEARING
REG.NO.KL-47-K-3226
- Annexure A2 TRUE COPY OF THE FIRST INFORMATION
REPORT IN CR.NO.13/2021 OF KODUNGALLUR
EXCISE RANGE, THRISSUR DISTRICT DATED
08.10.2021
- Annexure A3 TRUE COPY OF THE ORDER DATED 02-04-
2022 IN CRL. M.P. NO.868 OF 2022
PASSED BY THE 1ST ADDITIONAL SESSIONS
COURT, THRISSUR
- Annexure A4 TRUE COPY OF THE ORDER DATED 16-01-
2023 IN CRL. M.P. NO.796 OF 2022
PASSED BY THE 1ST ADDITIONAL SESSIONS
COURT THRISSUR

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF CRL.MC 271/2023

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE REGISTRATION CERTIFICATE BEARING NO.KL 78 A 9502 DATED 05.03.2021 OF THE CAR, ISSUED BY THE REGISTERING AUTHORITY, IRRITTY SRTO
Annexure A2	TRUE COPY OF ORDER DATED 1.11.2022 ISSUED BY THE NDPS COURT, VADAKARA

W.P.(CrI) Nos.1189 & 1241/2022, 29 & 83/2023,
CrI.M.C Nos.8820, 9193 & 9255/2022 and 176, 271 & 323/2023

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APPENDIX OF CRL.MC 323/2023

PETITIONER ANNEXURES

- Annexure1 TRUE COPY OF THE RC BOOK OF THE
VEHICLE BEARING REG NO. KL-21-L-2279
TO THE PETITIONER
- Annexure2 TRUE COPY OF THE PETITION IN CRL MP
NO. 3045/2022 BEFORE THE ADDL SESSIONS
COURT-I, THIRUVANANTHAPURAM DATED
24.11.2022
- Annexure3 CERTIFIED COPY OF THE ORDER DATED
30.11.2022 IN CRL MP NO. 3045/2022 OF
THE ADDL SESSIONS COURT-I,
THIRUVANANTHAPURM