

**THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI**

**CRIMINAL REVISION CASE No.482 of 2021**

**ORDER:-**

This Criminal Revision Case is filed seeking to set aside the order dated 10.02.2021 passed in CrI.M.P.No.687 of 2020 in crime No.401 of 2019 passed by the learned I Additional District and Sessions Judge, Ananthapuram, Ananthapuram District and consequently release the petitioner's motor cycle bearing registration No.AP 02 AC 9493.

2. Heard Sri O.Manohar Reddy, learned counsel for the petitioner and learned Assistant Public Prosecutor appearing on behalf of respondent No.1-State.

3. The learned counsel for the petitioner submits that the subject vehicle was seized by the Police in connection with crime No.401 of 2019 registered for the offences punishable under Section 420, 120(B) r/w 34 of the Indian Penal Code, 1860 (for short "IPC") and Section 20(b) (ii) and (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 9(1) of Andhra Pradesh Gaming Act (Matka). Subsequent to the seizure of the vehicle, the petitioner approached the Court below by filing a petition under Sections 457 Cr.P.C. seeking interim custody of the subject vehicle. But the said petition was dismissed basing on the ground that without giving notice to absconding accused, it is impermissible to pass any order.

4. Learned counsel for the petitioner also submits that the petitioner is no way connected with the offence and subject vehicle is

very much necessary and if the vehicle is kept idle for long period it will get damaged.

5. Learned counsel for the petitioner also submits that even if a vehicle is seized under NDPS Act for use of the vehicle in transporting narcotic goods, the owner is entitled for interim custody of the vehicle and this Court has granted interim custody of the vehicles in similar cases. He submits that in this case there is no dispute about ownership of the vehicle and no prejudice would be caused if the interim custody is granted. Hence, this petition may be allowed.

6. In the light of the arguments advanced, it is appropriate to extract Section 457 of Cr.P.C which reads thus:

**457. Procedure by police upon seizure of property.**

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

7. As per Section 457 of Cr.P.C., if the person is known and when there is no dispute about the ownership of the vehicle, the Magistrate may order delivery of the property to her on such conditions as the Magistrate thinks fit.

8. There is no dispute with regard to the petitioner's ownership over the vehicle. It is clear that there is no bar under the NDPS Act on the Courts to order for interim custody of a vehicle which is seized in a crime registered for the offences under the said Act. Section 63 of the NDPS Act reads thus:

“(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly: Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim: Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, 1[controlled substance,] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

9. From the above it is clear that the Court shall decide whether a vehicle seized in connection with crime registered under the provisions of the NDPS Act is liable for confiscation or not only at the time of convicting, acquitting or discharging the accused. But there is no mention that interim custody of a vehicle cannot be ordered. Further if the vehicle is kept idle it will render useless and there is every likelihood of the vehicle getting destroyed. As far the notice to the absconding accused is concerned in the facts of the case there is no dispute about the ownership of the vehicle and as the accused is

absconding if the vehicle is kept in police station it is likely to get damaged and it would cause hardship to the owner of the vehicle.

10. Taking into consideration the submissions made by the learned counsel for the petitioner and in view of the settled law this Court feels it appropriate to grant interim custody of the vehicle to the petitioner by imposing certain conditions.

11. Accordingly the criminal revision case is allowed and the order dated 10.02.2021 passed in CrI.M.P.No.687 of 2020 by the learned I Additional District and Sessions Judge, Ananthapuram, Ananthapuram District is set aside. The vehicle i.e. motor cycle bearing registration No.AP 02 AC 9493 is ordered to be given interim custody to the petitioner on condition of her executing a bond for a sum of Rs.25,000/- (Rupees Twenty five thousands only) with one surety for a likesum to the satisfaction of the I Additional District and Sessions Judge, Ananthapuram, Ananthapuram District.

As a sequel, all the pending miscellaneous applications are closed.

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**JUSTICE LALITHA KANNEGANTI**

Date : 11.08.2021  
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**THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI**

Allowed

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