

Sainaba vs The State Of Kerala on 18 November, 2022

Bench: Sanjay Kishan Kaul, Abhay S. Oka

1

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2005/2022
[@ SLP [CRL.] NO. 7280/2022]

SAINABA

Appellant(s)

VERSUS

THE STATE OF KERALA & ANR.

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for parties. The appellant alleges that that she is the registered owner of a Maruti Suzuki car and the vehicle was involved in Crime No.74 of 2022 at Manjeri Police Station for offences punishable under Sections 20(b)(ii)(B) and 29 of the Narcotic Drugs and Psychotropic Substances Act,1985 (for short the 'NDPS Act'). The incident occurred on 30.01.2022 when accused No.1 telephonically asked the appellant's son i.e. accused No.3 to come to Tirur railway station with car to pick up and drop accused No.1 in his house. While they were so returning from Tirur railway station, the police searched their vehicle and found 4.200 KG of Ganja from a bag of the accused No.1 and accordingly registered the crime.

An application was filed by the appellant seeking release of the car. The Special Court, however, dismissed the application and the endeavour of the appellant before Reason: the High Court also did not succeed as the Criminal M.C. No.2371/2022 was dismissed on 19.05.2022 which has been assailed before us.

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.

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

Learned counsel seeks to rely on the judgment of this Court in *Sunderbhai Ambalal Desai v. State of Gujarat* - (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.

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.

The appeal is accordingly allowed leaving parties to bear their own costs.

.....J. [SANJAY KISHAN KAUL]J. [ABHAY S. OKA] NEW DELHI;

NOVEMBER 18, 2022.

ITEM NO.27

COURT NO.2

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.)

No(s). 7280/2022

(Arising out of impugned final judgment and order dated 19-05-2022 in CRLMC No. 2371/2022 passed by the High Court Of Kerala At Ernakulam) SAINABA Petitioner(s) VERSUS THE STATE OF KERALA & ANR. Respondent(s) (FOR ADMISSION and I.R.) Date : 18-11-2022 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE ABHAY S. OKA For Petitioner(s) Mr. Manoj V. George, Adv.

Mr. Prashanth K., Adv.

Mr. Junais P., Adv.

Ms. Shilpa Liza George, AOR For Respondent(s) Mr. Nishe Rajen Shonker, AOR Ms. Anu K. Joy, Adv.

Ms. Alim Anvar, Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)

[Signed order is placed on the file]