

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH**

**TUESDAY, THE 18<sup>TH</sup> DAY OF APRIL 2023 / 28<sup>TH</sup> CHAITHRA, 1945**

**CRL.MC NO. 1606 OF 2023**

**CMP 2934/2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS -**

**II, PERINTHALMANNA**

**CRIME NO.231/2022 OF MELATTUR POLICE STATION**

**PETITIONER/ACCUSED NO.1:**

YAHYA M  
AGED 35 YEARS  
S/O. MOHAMMED ZAKKARIYA, MARUKARA, KEEZHATTUR,  
MALAPPURAM DISTRICT, PIN - 679325  
BY ADV K.RAKESH

**RESPONDENTS/STATE & COMPLAINANT:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM, KOCHI, PIN - 682031
- 2 THE STATION HOUSE OFFICER  
MELATTUR POLICE STATION, MALAPPURAM DISTRICT, PIN -  
679326

**OTHER PRESENT:**

SR.PP- SMT. REKHA.S

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
18.04.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER**

Annexure-A order passed by the Judicial First Class Magistrate Court-II, Perinthalmanna, dismissing a petition filed under Section 451 of the Cr.P.C. is under challenge in this Crl.M.C.

2. The petitioner is the accused in crime No.231/2022 of Melattur Police Station.

3. The offence involved among other sections is under Section 302 of the IPC. The car belonging to the petitioner was seized in connection with the above crime. According to the prosecution, the car was used for the commission of the crime. The petitioner filed C.M.P. No.2934/2022 for release of the car under Section 451 of the Cr.P.C. The court below, after hearing both sides, dismissed the application as per the impugned order.

4. I have heard Sri.K.Rakesh, the learned counsel appearing for the petitioner and Smt.Rekha S., the learned Senior Public Prosecutor.

5. The court below dismissed the application mainly

on two grounds; (i) Since the car was used for the commission of the offence, its identification is necessary at the time of trial, and (ii) Important scientific evidence was collected from the interior part of the car.

6. The Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat** [(2022) 10 SCC 283] has held that the vehicle seized during the investigation proceedings should not be allowed to be kept in the custody of the court till the culmination of the proceedings, but it has to be released to the person, who is entitled for its custody, by imposing conditions.

7. The vehicle is lying in the court premises exposed to sun and rain for the last so many months. It may take few more years for the disposal of the case. The fact that the vehicle was used for the commission of the offence and that scientific evidence was collected from inside the car, are not grounds to reject the application for interim custody of the vehicle. Adequate conditions can be imposed to ensure the production of the car at the time of trial, if necessary. Hence, the impugned order is set aside.

The learned Magistrate is directed to release the car to the petitioner on imposing such conditions as he deems fit to impose.

The Crl.M.C. is disposed of as above.

Sd/-

**DR.KAUSER EDAPPAGATH, JUDGE**

okb/18.4.23

//True copy// P.S. to Judge

**APPENDIX OF CRL.MC 1606/2023**

PETITIONER ANNEXURES

Annexure A

A TRUE COPY OF THE ORDER DATED 12-8-2022  
PASSED BY J.F.C.M-II, PERINTHALMANNA IN  
C.M.P.NO.2934/2022