

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

CRL.MC NO. 5297 OF 2024

**CRIME NO.376/2024 OF KUNNAMKULAM POLICE STATION, THRISSUR
AGAINST THE ORDER DATED 06.05.2024 IN CRMP NO.2607 OF 2024 OF
JUDICIAL MAGISTRATE OF FIRST CLASS, KUNNAMKULAM**

PETITIONER/PETITIONER:

**SUHAIL M.A.
AGED 33 YEARS
S/O.ABDUL HAMEED,
MELAYIL HOUSE, RAMAPURAM ROAD,
KATTAKAMBAL P.O., THRISSUR DISTRICT,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,
HASHIR A.H.,
AGED 28 YEARS,
S/O.HAMZA,
CHEMBATHEYIL HOUSE, PAZHANJI P.O.,
THRISSUR DISTRICT., PIN - 680544**

BY ADV BABU S. NAIR

RESPONDENTS/STATE, COMPLAINANT & RDO:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI, PIN - 682031**
- 2 THE STATION HOUSE OFFICER
KUNNAMKULAM POLICE STATION,
THRISSUR DISTRICT, PIN - 680503**
- 3 THE REVENUE DIVISIONAL OFFICER/SUB DIVISIONAL
MAGISTRATE
OFFICE OF THE REVENUE DIVISIONAL OFFICER,
CIVIL STATION, AYYANTHOLE,
THRISSUR DISTRICT, PIN - 680003**

CrI.M.C.No.5297 of 2024

-:2:-

**BY ADV. NOUSHAD K. A,
PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
31.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

“C.R.”

BECHU KURIAN THOMAS, J.

CrI.M.C.No.5297 of 2024

Dated this the 31st day of July, 2024

ORDER

Petitioner’s vehicle, bearing registration No.KL-48-R-0220 was allegedly found dumping septic waste into a water stream in a manner that pollutes the water source. The offence is alleged to have been committed on 18.03.2024 and the vehicle was seized immediately. Though petitioner filed an application for interim custody of the vehicle, the learned Magistrate by the impugned order dismissed the application. Thus this challenge under section 482 Cr.P.C.

2. I have heard Sri.Babu. S. Nair, the learned counsel for the petitioner, and Sri.Noushad. K. A, the learned Public Prosecutor.

3. In W.P.(C) No.7844/2023, a Division Bench of this Court had directed that, as a preventive measure, vehicles dumping waste into public properties should not be released without permission from this Court.

4. In December 2023, the statutes relating to the local authorities were amended to incorporate provisions for confiscation of vehicles involved in dumping waste into public properties. Despite all these exacting provisions and directions, dumping waste, especially septic

waste, into public properties, is on the rise. Indulging in such odious and nefarious activities fans the commercial interests of the perpetrators. A time has come to incorporate further stringent conditions, at least when vehicles seized while dumping waste on public properties are directed to be released on interim custody.

5. In the decision in ***State of Karnataka v. K.Krishnan*** [(2000) 7 SCC 80], the Supreme Court had observed that in serious offences committed under the Forest and Wild Life Act, interim custody of vehicles can be granted by imposing conditions like furnishing a bank guarantee. The Supreme Court observed that for the purposes of achieving the object for which the Act was enacted, a liberal approach is uncalled for, as it will frustrate the provisions of the said statute. It was further observed that if for any exceptional reason, a court is inclined to release a vehicle during the pendency of the criminal proceedings, furnishing a bank guarantee should be the minimum condition.

6. However, in ***Sunderbhai Ambalal Desai v. State of Gujarat*** [(2002) 10 SCC 283], it has been observed that vehicles need not be kept under police custody indefinitely, pending trial, as it may destroy the vehicle itself and that conditions can be incorporated while ordering release on interim custody.

7. The purpose of the direction of the Division Bench of this Court in W.P.(C) No.7844/2023, not to release vehicles dumping waste on public properties without obtaining permission from this Court is intended to prevent repetition of such disdainful acts. Despite the above direction,

numerous instances are being reported, indicating rampant dumping of waste, especially fecal waste onto public drains and water bodies. The amendment to the Panchayat Raj Act, 1994 incorporating provisions for confiscation of vehicles dumping waste on public properties is also intended to act as a deterrent. The above objectives must be borne in mind by this Court while considering the release of the vehicle on interim custody.

8. In the instant case, the petitioner is alleged to have committed a serious crime of dumping septic waste into a water source, and confiscation proceedings are stated to have already been initiated under Section 219S of the Kerala Panchayat Raj Act, 1994. The possibility of repetition of similar offences using the vehicle also cannot be ignored. Therefore, stringent conditions ought to be imposed if the vehicle is permitted to be released.

9. Further, no party shall be under the impression that vehicle release would be possible on easy terms when such vehicle is alleged to have been involved in the commission of an offence that creates a health hazard. Any such easy release would tempt offenders to repeat the commission of such offences as observed in **Krishnan's** case (supra).

10. Having regard to the aforesaid circumstances this Court is of the view that stringent conditions in the form of at least furnishing of a bank guarantee should be imposed while directing release of vehicle dumping waste into public property.

11. In the result, the impugned order is set aside and there will be a direction to the Investigating Officer in Crime No.376/2024 of Kunnamkulam Police Station, Thrissur, to release the vehicle, bearing registration No.KL-48-R-0220, to the petitioner on the following conditions:-

- (i) Petitioner shall execute a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum to the satisfaction of the Jurisdictional Magistrate.*
- (ii) Petitioner shall furnish a Bank Guarantee for Rs.2,00,000/- [Rupees Two lakhs only] before the Jurisdictional Magistrate undertaking to produce the vehicle as and when required and also that he shall not use or cause to be used the vehicle for committing similar offences.*
- (iii) Petitioner shall not transfer, sublet, lease or sell the vehicle to any person, until conclusion of the trial.*
- (iv) Petitioner shall participate in the trial as well as the confiscation proceedings, if any, initiated.*
- (v) Petitioner shall not commit similar offences in the future using the vehicle and if such offences are committed, the police will be free to repossess the vehicle and initiate appropriate measures to enforce the guarantee.*

The CrI.M.C. is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

APPENDIX OF CRL.MC 5297/2024

PETITIONER'S ANNEXURES

- Annexure A** **A TRUE COPY OF THE F.I.R. IN CRIME NO.376/2024 OF THE KUNNAMKULAM POLICE STATION DATED, 18-3-2024**
- Annexure B** **A TRUE COPY OF THE ORDER IN CRL.M.C.NO.2995/2024 OF THIS HON'BLE COURT DATED, 27-3-2024**
- Annexure C** **A TRUE COPY OF THE REPORT SUBMITTED BY THE 2ND RESPONDENT BEFORE THE J.F.C.M., KUNNAMKULAM DATED, 29-4-2024**
- Annexure D** **CERTIFIED COPY OF THE ORDER IN CRL.M.P.NO.2607/2024 DATED, 6-5-2024 OF THE J.F.C.M., KUNNAMKULAM**
- Annexure E** **A TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.24276/2023 DATED, 16-8-2023 OF THIS HON'BLE COURT**
- Annexure F** **A TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.5525/2024 DATED, 23-2-2024 OF THIS HON'BLE COURT**
- Annexure G** **A TRUE COPY OF THE ORDER IN W.P.(C)NO.11035/2024 DATED, 5-4-2024 OF THIS HON'BLE COURT**