

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 4261 of 2014
Date of decision:- May 26, 2015

Birender Kumar @ Virender Kumar

...Petitioner...

versus

State of Haryana

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Gurinder Pal Singh, Advocate,
for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? (✓)

JASPAL SINGH, J.

Challenge in this revision petition is to order dated December 11, 2014 passed by Id. Additional District & Sessions Judge, Fatehabad whereby an application preferred by petitioner (registered owner) for releasing his vehicle Tata Canter bearing No.HR-47-6641, on sapurdari has been declined, which is alleged to have been involved in case arising out of FIR No. 638, dated 07.12.2013, under Sections 15 and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act').

2. In response to the notice of motion issued by this Court, learned State counsel, Mr. Vikas Chopra, DAG, Haryana appeared

and represented State of Haryana.

3. While assailing the impugned order dated December 11, 2014, it has been contended by learned counsel for petitioner that during police investigation, co-accused is alleged to have suffered a disclosure statements on March 20, 2014 (Annexures P-1 and P-2) disclosing that vehicle was borrowed by him from the petitioner by his former driver namely Sunil Kumar for bringing stones for the construction of his house. In fact, petitioner was wrongly informed by accused that his vehicle has been stolen away, regarding which he got registered an FIR at Police Station Neem Ka Thana (Rajasthan). At the time, he was not aware of its involvement in any case. However, subsequently, said FIR regarding theft of vehicle was got cancelled.

4. Admittedly, petitioner is the registered owner of Tata Canter in question, which is lying in the premises of police station, after it was impounded. Not only the value of vehicle is decreasing day-by-day yet petitioner is also suffering pecuniary loss for no fault on his part. The mere fact that recovery of poppy husk has been effected from Tata canter at the instance of his co-accused, petitioner cannot be declined of sapurdari and use of the vehicle during pendency of trial. The impugned order declining the vehicle on sapurdari is not sustainable in the eyes of law and is liable to be set aside whereby application deserve to be accepted for releasing the vehicle on sapurdari.

5. To buttress his contention, learned counsel for petitioner has also relied upon pronouncement of Hon'ble Apex Court

captioned as ***“Sunderbhai Ambalal Desai v. State of Gujrat”, 2003 (1) RCR (Criminal) 380***, as well of this Court captioned as ***“Roop Chand and Company v. State of Punjab”, 1996 (1) RCR (Crl.) 401 (P&H)***.

6. Learned counsel appearing on behalf of the State while opposing the prayer of the petitioner has argued with vehemence that sapurdari of vehicle in question has rightly been declined by Id. trial court as the vehicle in question was involved for transportation of 25 large bags of poppy husk weighing 39 kg. each besides 24 others small bags containing 19 kg. each of poppy husk. It cannot be said that petitioner was not aware about the transportation of huge quantity of contraband in his Tata Canter. Even a false FIR No. 7, dated 04.01.2014, under Section 379 of IPC, at Police Station Neem Ka Thana (Rajasthan) was lodged just to save his skin. He accordingly prayed for dismissal of revision petition.

7 This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused the record available.

8. The custody and disposal of property involved in the trial is dealt by Section 451 and 457 of the Code of Criminal Procedure and for the proper adjudication of the matter in controversy between the parties of this revision petition, it would be appropriate to reflect aforesaid provisions, which read thus:-

“451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper

custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Explanation.- For the purposes of this section," property" includes-

[\(a\)](#) property of any kind or document which is produced before the Court or which is in its custody,

[\(b\)](#) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

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.

9. A glance at Section 451 Cr.P.C. clearly empowers the Court to pass an appropriate orders with regard to such property for its proper custody pending conclusion of inquiry or trial; to order it to be sold or otherwise disposed of, after recording such evidence as it

thinks necessary; and/or if the property is subject to speedy and natural decay, to dispose of the same.

10. The aforesaid procedure further provides that power so conferred under Section 451 Cr.P.C. is to be exercised expeditiously and judiciously, keeping in view the fact that (i) owner of the article would not suffer because of its remaining unused or by its misappropriation (ii) Court or the police would not be required to keep the article in safe custody; and/or if the proper panchnama before handing over the possession of article is prepared that can be used in evidence instead of its production before the Court during trial. If necessary, evidence could also be recorded describing the nature of property in detail and/or the jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

11. The Hon'ble Apex Court while referring pronouncements in this case **“Sunderbhai Ambalal Desai's case** (supra) also categorically observed that whatever is the situation, it is of no use to keep any seized article or vehicle at the police station for a long period as it is detrimental to the interest of owner as well as to State in case of its confiscation. For that reason, Magistrate is required to pass appropriate orders immediately and by taking appropriate bonds and guarantee as well as the security for the return of the said vehicles and in case, the same is required at any subsequent stage, a direction can be given.

12. Adverting to the facts and circumstances of the case in hand, undoubtedly that there are contradictory statements of the

accused as well as registered owner with regard to involvement of Tata Canter bearing No. HR47-6641 but one thing is evident that vehicle is lying at the premises of police station and its value/price decreasing day-by-day and in case of its non-use, machinery is also going to decay. The ratio of various judgments referred to above also support the case of petitioner. Even otherwise, this Court in case ***“Harpreet Singh v. State of Punjab”, 2006 (4) RCR (Crl.) 719 (P&H)*** allowed the prayer of the accused-petitioner therein for releasing the vehicle on sapurdari under the provisions of the NDPS Act.

13. Keeping in view the aforesaid discussion as well as facts and circumstances of this case, this Court is of the considered view that it will be in the interest of justice, if the vehicle in question is ordered to be released on sapurdari to petitioner (registered owner) on his furnishing requisite undertaking/bail bonds/surety bonds.

14. Accordingly, petition is allowed and impugned order dated December 11, 2014 passed by Id. Additional District & Sessions Judge, Fatehabad is set aside and vehicle Tata Canter bearing No. HR-47-6641 is ordered to be released on sapurdari to the petitioner on his executing requisite bonds at the satisfaction of Id. trial court.

May 26, 2015
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(JASPAL SINGH)
JUDGE