

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.18163 of 2015
Date of Decision:-31.08.2015

Om Parkash Verma and others

..... Petitioners

Vs.

Union of India and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Harkesh Manuja, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed by 71 petitioners, who are allegedly having the accounts/lockers in the Punjab National Bank, Gohana Branch wherein a theft took place and the articles lying in the lockers were stolen by the thieves.

Apropos, FIR No.329 dated 27.10.2014 was registered under Sections 457, 380, 120B, 420, 465, 467, 468, 471, 201 and 202 of the Indian Penal Code, 1860 [for short 'the Act'] at Police Station City Gohana. During the course of investigation, the Police recovered 49 kg. 542 gms. and 10 mg. ornaments and cash amount of ₹4,43,500/- from the accused. The said articles were lying with the police after recovery but as the Punjab National Bank did not come forward to seek superdari of the said articles, the investigating agency filed an application before the learned trial Court for directing the officials of the Bank to take the ornaments on superdari.

The learned trial Court, after considering the judgment of the Supreme Court rendered in the case of "**Sunderbhai**

Ambalal Desai Vs. State of Gujarat” 2003(1) RCR (Criminal)

380, passed the following order: -

“Hence, in view of the powers conferred upon the criminal court under Section 451 of the Cr.P.C. and the law laid down by the Hon’ble Apex Court in the abovementioned case, I am of the considered view that keeping in view the fact that the bank officials have not disclosed the name of the customer alongwith details of the property of each customer and the police is also bereft of such detail, so far the safe custody of the case property it appears to be justified. If it is ordered that the entire case property be kept in safe custody in the lockers of PNB, Gohana after preparing the proper details, panchnama of such articles, taking photographs and preparing videography of such articles by the police under the supervision of SDM, Gohana, who shall be at liberty to join the representatives of the locker holders and complainant bank. The manager PNB, Gohana is directed to make proper arrangement for keeping the said case property in their lockers. The PNB Gohana is further directed to furnish security bonds in the sum of ₹5 crores before the Court with undertaking that the case property shall be kept in safe custody and shall be produced before the Court as and when required. The four days time is sought by the Investigating Officer and the Bank officials for compliance and furnishing the security bonds. Request

allowed. Now, to come up on 24.12.2014 for compliance and furnishing the security bonds.”

This order has attained finality as it has not been challenged by the Bank or by the petitioners. However, the present petition has been filed by the petitioners seeking direction to the Punjab National Bank, Gohana to take the aforesaid articles on superdari and handover the same to them as per their claim.

It is submitted by learned counsel for the petitioners that there is no dispute about the title over the said articles, recovered from the accused as the case property, therefore, it can easily be apportioned amongst the petitioners after preparing an inventory.

In this regard, learned counsel for the petitioners has referred to the decision of the Supreme Court in the case of **Sunderbhai Ambalal Desai (Supra)** and decision of a Single Bench of this Court in the case of **“Balbir Singh @ Fauji Vs. State of Punjab” 2010(1) RCR (Criminal) 908.**

I have heard learned counsel for the petitioners in detail and perused the available record with his able assistance. Section 451 of the Criminal Procedure Code, 1973 [for short ‘the Cr.P.C.], which deals with ‘superdari’, is reproduced as under: -

*“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.”

In the case of **Sunderbhai Ambalal Desai (Supra)**, the Supreme Court was dealing with the situation where the FIR was registered by the Assistant Commissioner of Police ‘D’ Division, Surat that the petitioners and other police personnel were involved in offences punishable under Sections 429, 420, 465, 468, 477-A and 114 of the IPC. It was alleged that when they were working at various police stations, they have committed offences during the period from 20.2.1992 to 23.11.2001 by replacing mudammal articles including gold ornaments with other spurious articles, misappropriated the amount which was kept at the police station, unauthorisedly auctioned the seized property kept in the police custody, pending trial and tempering with the records of the police.

In this background, the Supreme Court passed the order that *“in case, where such articles are not handed over either to the complainant or to person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody it would be open to the concerned SHO, after preparing*

proper panchnama, to keep such articles in bank locker". Insofar as the judgment in the case of "**Balbir Singh @ Fauji (Supra)**" is concerned, it was a case where a car was used in trafficking the opium and was parked in the Police Station for such a long time of over two years and was reducing into junk. The Court thus, was of the view that after the case would be over, the said car would not be put to any use even if the accused in the said case is acquitted and in such a situation ordered to release the car.

In view of the above, the facts of the present case are not similar to the aforesaid case i.e. **Balbir Singh @ Fauji (Supra)**. The order passed by the trial Court is perfectly balanced, while taking into consideration that the bank officials have not disclosed the name of the customers along with details of the property of each customer and the Bank has been directed to furnish security bonds in the sum of ₹5 crores before the Court, with undertaking that the case property shall be kept in safe custody and shall be produced before the Court as and when required.

In view of the aforesaid facts and circumstance, I am of the considered opinion that the prayer made by the petitioners in the present petition cannot be granted.

Dismissed.

31.08.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE