

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3998 of 2018 (O&M)
Date of Decision: 18.05.2018

Manoj Kumar Singh

...Petitioner

V/S

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Deepa Jain, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN,J. (Oral):

Prayer in this petition is for setting aside the impugned order dated 19.12.2017 passed by the trial Court vide which the application filed by the petitioner for releasing the vehicle No. UP-85-AT-0882 on *superdari* was declined, during the pendency of the trial in FIR No. 1079 dated 17.11.2017 under Section 20/61/85 of the NDPS Act, registered at Police Station Saran, District Faridabad.

Counsel for the petitioner submits that the petitioner is the proprietor of M.K. Construction, which is the registered owner of the aforesaid vehicle. It is further submitted that as per allegations in the FIR, the driver of Ambulance No. UP 85AT-0882, registered in the name of M/s MK Construction, was apprehend with 78 kg. of ganja and he was arrested alongwith four other co-accused.

Counsel for the petitioner further submits that the petitioner is not named as an accused in the FIR and the said vehicle is lying parked in

the premises of Police Station, Saran, District Faridabad, and the trial Court has wrongly declined the prayer of the petitioner on the ground that as per Section 60 (3) of the NDPS Act, the vehicle involved in an offence punishable under the NDPS Act, cannot be released on *superdari* until and unless the owner of the vehicle proves that the vehicle was used without his knowledge or in connivance of the owner himself.

Counsel for the petitioner further submits that the vehicle in dispute was used as an Ambulance and there was a GPS system installed in the vehicle and, therefore, the petitioner had no knowledge that it was misused by the driver of the vehicle. Counsel for the petitioner further submits that there is no allegation in the FIR or in the disclosure statement of the accused persons that the vehicle was being used for any such purpose, i.e. for transporting the contraband or that this fact was within the knowledge of the petitioner. Therefore, the trial Court has wrongly drawn a presumption that the vehicle in question cannot be released on *superdari* as per the provisions of Section 60(3) of the NDPS Act.

Counsel for the petitioner has relied upon a Division Bench judgment of this Court in case titled as **Gurbinder Singh @ Shinder vs. State of Punjab, 2016 (4) RCR (Criminal) 492**, wherein while dealing with the similar case under the NDPS Act, has held that there is no provision under the NDPS Act debarring the release of the vehicle seized under the NDPS Act. It was further held that the vehicle used for transporting the narcotic drugs and psychotropic substances can also be released on *superdari* invoking the provision under Section 451 Cr.P.C.

Counsel for the petitioner has further relied upon **Balbir Singh @ Fauji vs. State of Punjab, 2010 (1) RCR (Criminal), 908** and **Nirmal**

Singh vs. State of Punjab, 2007 (1) RCR (Criminal) 986, wherein, while dealing with similar point regarding release of vehicle on *superdari*, seized by the police and during investigation under the NDPS Act, it was held that the vehicle can be released on *superdari* pending inquiry or trial. Counsel for the petitioner has further submitted that since the vehicle is lying parked in the police station for a period of long time, it will be reduced into junk and will not be put to any use in case of acquittal of the accused at subsequent stage.

In both the abovesaid judgments, this Court has released the vehicle on *superdari* while relying upon the judgment of Hon'ble Supreme Court in *Sunderbhai Ambalal Desai vs. State of Gujrat, 2003 (1) RCR (Criminal) 380*, where the Hon'ble Supreme Court has held that power under Section 451 of Cr.P.C. should be exercised expeditiously and judiciously so that the owner of the vehicle should not suffer because vehicle is lying unused.

Learned State counsel, on instructions from HC Raj Narain, has not disputed the factual position. It is also not disputed that the owner of the vehicle is not arrayed as an accused persons in the same FIR under the NDPS Act.

After hearing learned counsel for the parties, I find merit in the present petition.

Since the petitioner, being proprietor of MK Construction, is the registered owner of the Ambulance in question and is not an accused in the FIR, therefore, there is no possibility of misusing the vehicle or trying to destroy any evidence.

In view of the above, the impugned order dated 17.11.2017 is

set aside. The trial Court/Special Judge is directed to release the Ambulance bearing registration No.UP 85AT-0882 subject to such terms and conditions as it may deem fit and appropriate. The petitioner will also furnish an undertaking before the trial Court that he will produce the vehicle as and when required by the trial Court and will not dispose of the same during pendency of the trial.

Disposed of.

18.05.2018
smriti

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No.
Whether Reportable : Yes/No