

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

**CRR No.3210 of 2017
Decided on: 22.02.2018**

Gurmeet Singh @ Goldy

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. A.S. Dhindsa, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the order dated 24.08.2017 passed by the Judge, Special Court, Patiala vide which the application filed by the petitioner/accused for releasing of a Verna car bearing registration No.PB-28-C-8273 on Supardari was dismissed.

Brief facts of the case are that an FIR No.82 dated 28.04.2017 under Section 15 of the NDPS Act and 61 of the Excise Act was registered against the petitioner on account of recovery of 10 Kgs. of poppy husk and 40 cartons of liquor which were meant for sale in Haryana. During the investigation, when the petitioner was arrested, the car was also taken in custody by the police and it is lying parked in the premises of the Police Station Sadar Patiala since 28.04.2017.

Counsel for the petitioner has submitted that the car is lying unused in the custody of the police since 28.04.2017 and with the passage of time, it will reduce into a junk and the petitioner is the registered owner of the said car. Counsel for the petitioner has relied

upon the judgment passed by this Court “**Nirmal Singh vs State of Punjab**”, 2007(1) RCR (Criminal) 986, wherein in similar circumstances, a vehicle which was taken by the police in custody in a case under the NDPS Act was released on Supardari by observing that if the same is allowed to stand in the Police Station, it will become unfit for road worthiness with the passage of time and its machinery, colour and tyres would get damaged. The operative part of the judgment is reproduced as under:-

11. Learned counsel for the petitioner has submitted that the petitioner is ready to give an undertaking that as and when the Court would require the aforementioned vehicle, he will produce the same in the same condition before the concerned Court.

12. In Harpreet Singh v. State of Punjab, 2006(4) RCR(Crl.) 719 (P&H), this Court while relying upon Sunderbhai Ambalal Desai v. State of Gujarat, 2003(1) RCR(Crl.) 380 (SC) and Roop Chand and Company v. State of Punjab, 1996(1) RCR(Crl.) 401 (P&H) allowed the prayer of the accused petitioner therein for release of the vehicle on superdari in a case under the provisions of Narcotic Drugs And Psychotropic Substances Act.

13. Keeping in view the aforementioned facts and the undertaking given by the petitioner, it will be in the interest of justice if the vehicle in question is ordered to be released on superdari to the petitioner on his furnishing the requisite undertaking.

14. Accordingly, the present revision is allowed, impugned order passed by Judge, Special Court, Barnala dated 24.3.2006 is set aside and the vehicle in question is ordered to be released on superdari to the petitioner on his executing personal bond in the sum of Rs. Three lacs with

one surety in the like amount with an undertaking to the effect that as and when the trial Court would require the said vehicle, he will produce the same in the same condition at his own cost before the concerned Court. He shall also furnish an undertaking that in future, he will not use the said vehicle for such an offence.

Petition allowed.

Reply by way of affidavit of Deputy Superintendent of Police, Rural, Patiala has been filed in the Court and as per this reply, it is not disputed that the petitioner is the registered owner of Verna car bearing registration No. PB-28-C-8273, which is taken into possession by the police in the aforesaid FIR No.82. It is further submitted in the reply that in case the car is released on supardari, there is a possibility that the petitioner may again misuse it for smuggling of the contraband. It is further stated in the reply that one another FIR No.62 of 2016 under Section 61/1/14 of the Punjab Excise Act is also registered in the Police Station Kheri Gandia, though, it is not stated in the FIR that this car was involved in the said FIR. It is, thus, prayed that the present petition may be dismissed.

After hearing counsel for the parties, I find that as per the provisions of Section 451 Cr.P.C., it is provided that the Court can pass an appropriate order such as an order for proper custody of property pending conclusion of enquiry or trial and if the property is subject to speedy and natural decay, it be sold and otherwise disposed of as Court thinks necessary. The Hon'ble Supreme Court in case of “***Sunderbhai Ambalal Desai vs State of Gujarat***”, 2003(1) RCR (Criminal) 380 has observed as under:-

“12. In the case of Sunderbhai (supra) while dealing with Section 451 of Criminal Procedure Code the Apex Court observed as under :-

"In our view, the powers under Section 451, Criminal Procedure Code should be exercised expeditiously and judiciously. It would serve various purposes, namely :-

(1) Owner of the article would not suffer because of its remaining unused or by its misappropriation.

(2) Court or the police would not be required to keep the article in safe custody.

(3) If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail"

It is not disputed that the vehicle is lying parked in the premises of the Police Station since 28.04.2017 and almost a period of more than 10 months has lapsed and with the passage of time, it will reduce into a junk and may not be put to any use, in case of acquittal of the petitioner/accused. The only reason given by the trial Court for dismissing the application is that the police has raised an objection that the car may be misused again for the purpose of smuggling of contraband, is not supported by any document. Accordingly, this petition is allowed, the impugned order dated 24.08.2017 passed by the Judge, Special Court, Patiala is set-aside. The Judge, Special Court, Patiala is directed to release the vehicle in question on supardari to the petitioner on furnishing personal bonds in the sum of Rs.1,50,000/-

with one surety in the like amount and on his executing an undertaking that he will not use the vehicle for any illegal activity and he will produce the vehicle in the same condition as and when required by the trial Court during the course of trial.

22.02.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No