

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 3265 of 2017
Date of Decision: 16.02.2018

Gurbinder

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Amit Khatkar, Advocate,
for the petitioner.

Mr. Surinder Singh, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

By this revision petition, the petitioner challenges the order dated 25.07.2017 passed by the learned Additional Sessions Judge, Jind, vide which the petitioners' application seeking release of his Hyundai Eon car bearing registration no.HR-33C-3052, on *Sapurdari* has been declined.

The background is that the aforesaid car is stated to have been apprehended, with 15 kgs and 130 gms of poppy husk recovered from it and consequently, FIR no.107 dated 23.05.2017 was registered at Police Station Uchana, District Jind, alleging therein the commission of offences punishable under Sections 15 and 61 of the NDPS Act 1985, with the petitioner and one other person being arraigned as the accused in the FIR.

2. As the owner of the vehicle the petitioner thereafter filed the aforesaid application, which has been dismissed, with the learned Additional Sessions Judge simply stating that as the vehicle “is involved in committing crime under Section

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15/61/85 of NDPS Act”, hence, it was not deemed proper to release it till the disposal of the case.

3. The petitioner, on the other hand, cites Section 451 of the Code of Criminal Procedure, 1973, which reads as follows:-

“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.”

4. Mr. Khatkar, learned counsel for the petitioner, submits that as the car is simply standing in the police station, it would start rotting/rusting, thereby making it unfit for use even if eventually the petitioner and his co-accused are acquitted in the case registered against them. Hence, he submits that subject to conditions put, the vehicle should have been released in terms of the aforesaid provision.

He relies upon a judgment of a Division Bench of this Court in **Gurbinder Singh @ Shinder vs. State of Punjab** 2016 (4) RCR (Criminal) 492, to submit that even where the owner of the vehicle seized in a case under the NDPS Act is an accused, the vehicle is still to be released on '*Sapurdari*'.

A perusal of the aforesaid judgment of the Division Bench shows that after considering the provisions of Sections 451, 452 and 457 of the Cr.P.C., as also Sections 60 and 63 of the NDPS Act, and referring to an order of the Supreme

Court in Union of India v. Dinesh Kumar Verma (2015) 9 SCC 330, wherein in fact, it was held that “the High Court was not justified in releasing the vehicle”, it was yet held by the Division Bench that no distinction was made in the order of the Supreme Court between vehicles seized under 'the scheme of the Code of Criminal Procedure' and vehicles seized under the NDPS Act, and actually the order passed by the Supreme Court was in the special facts and circumstances of the particular case before it.

A reference was also made by the Division Bench to an order of another Division Bench of this Court in Tarsem Singh v. State of Punjab 2005 (4) RCR (Criminal) 300, in which the order for releasing the vehicle on 'Sapurdari' had been passed by a Sub Divisional Judicial Magistrate, who was not a Special Judge conferred with the power to try cases under the NDPS Act. Hence, in *Gurbinder Singhs'* case, it was held that the said judgment also could not be held to have laid down the law that the vehicle cannot be released.

5. Eventually, it was held as follows by the Division Bench in *Gurbinder Singhs'* case, as follows:-

“21. In the above facts and circumstances, we have no hesitation to hold that there is no provision under the NDPS Act debarring the release of the vehicle for interim custody. The provision under Section 451 Cr.P.C. which is found not inconsistent with the provisions of the NDPS Act is applicable to the vehicle seized under the NDPS Act as well. No differential treatment to the vehicle seized under the NDPS Act is contemplated either under the provisions of the NDPS Act or under the ratio laid down by the Court of law. In our considered view, the law laid down by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai's* case (supra) will apply to the vehicles seized under the NDPS Act as well. Any contrary view taken by the Courts of law would be against the interest of the owner of the vehicles, the public at large and the State.

22. In the above facts and circumstances, we hold that the vehicle

used for transporting the narcotic drugs and psychotropic substances can also be released on sapurdari invoking the provision under Section 451 Cr.P.C. The reference is answered accordingly.”

Learned counsel for the State could not dispute the factual position as regards the ratio of the judgment.

That being so, with the Division Bench having held that there is no provision under the NDPS Act that a vehicle seized cannot be so released, the petition is allowed and the vehicle of the petitioner is ordered to be released, on his furnishing the requisite bond before the CJM/Duty Magistrate, Jind, in the sum of Rs.35,000/-, with a surety in like amount. The petitioner is also restrained from selling off, hypothecating, or in any other manner encumbering or disposing of the vehicle in question, during the pendency of all criminal proceedings arising out of FIR no.107 dated 23.05.2017, registered at Police Station Uchana, District Jind, alleging therein the commission of offences punishable under Sections 15 and 61 of the NDPS Act 1985.

February 16, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No.