

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

CRR-2501-2018 (O&M)

Date of Decision:-27.11.2018

Sanjay

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Jasneet Kaur, Advocate for
Mr. Amrainder Singh, Advocate,
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

ARVIND SINGH SANGWAN, J.(Oral)

CRM-26614-2018

For the reasons stated in the application, delay of 265 days in filing the present revision petition is condoned.

CRR-2501-2018

Prayer in this petition is for setting aside the order dated 5.8.2017 passed by learned Additional Sessions Judge, Faridabad vide which, an application filed by the petitioner for releasing the vehicle bearing No.HR-26-BK-3796 on *Superdari*, in FIR No.909 dated 25.11.2016 (correct date 26.11.2016) registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sector 58, Faridabad, was dismissed.

The learned counsel for the petitioner submits that a similar application filed by co-accused Neeraj Kumar was dismissed by the trial Court and vide order dated 15.5.2018 passed in CRR-4901-2017, the same was allowed.

The operating part of the order reads as under:-

“Prayer in this petition is for setting aside the impugned order dated 05.08.2017 passed by the Additional Sessions Judge, Faridabad dismissing the application of the petitioner for releasing the vehicle Bolero Camper, bearing temporary No. HR-99-TR/6600, as the same has been taken in the police possession in FIR No. 909 dated 26.11.2016 under Section 20 of the NDPS Act, registered at Police Station Sector 55, Faridabad.

Brief facts of the case are that the aforesaid FIR has been registered against the petitioner and 04 other co-accused with the allegations that on 25.11.2016, the recovery of 20 kg and 100 grams of Ganja was made from the said vehicle.

Petitioner is on bail and is facing the trial. During pendency of the trial, the petitioner moved an application for releasing the aforesaid vehicle on superdari, which was dismissed by the trial Court vide impugned order dated 05.08.2017, on the ground that the petitioner has failed to get the vehicle registered in his name from the concerned Registration Authority and 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 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)**, wherein in similar circumstances, a vehicle which was seized during investigation of the case under the NDPS Act, was ordered to be released on superdari.*

Learned State counsel, on instructions from ASI Rakesh, has submitted that since the vehicle was found involved in the commission of the offence under the NDPS Act, the trial Court has rightly rejected the application for superdari. She further submits that the petitioner is not involved in any other case.

Counsel for the petitioner, in reply, has submitted that the vehicle is lying parked in the premises of the police station since 25.11.2016 and on account of its non wear and tear, it will outlive its utility and if it is allowed to be parked unattended, its valuable parts, such as tyres etc. will be taken away or stolen and its body will be worn out.

Counsel for the petitioner further submits that the provision under Section 60 of the NDPS Act are not mandatory as it is only for the purpose of recording satisfaction of the Court for releasing the vehicle on

superdari.

*After hearing learned counsel for the parties and in view of the judgment passed by this Court in **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 this Court, while relying upon the judgment of Hon'ble Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujrat, 2003 (1) RCR (Criminal) 380**, has ordered releasing of the vehicle seized by the police under the NDPS Act, this petition is allowed. Trial Court is directed to release the vehicle in question to the petitioner on superdari upon furnishing adequate surety bonds/other terms and conditions to its satisfaction, in accordance with law.*

Disposed of."

The counsel further submits that the petitioner is also facing the trial and the case of the petitioner is also on a similar footing.

The learned State counsel, however, opposed the prayer on the ground that the trial Court has rightly rejected the application for *Superdari*, however, it is submitted that the petitioner is not involved in any other case.

After hearing learned counsel for the parties and considering the fact that vide order dated 15.5.2018, the similar petition filed by co-accused Neeraj Kumar stands allowed and also in view of the fact that the vehicle in dispute is in possession of the police since 25.11.2016 and it may outclaim its utility on account of its lying part without any use, the present petition is

allowed.

The trial Court is directed to release the vehicle in question on *Superdari* on furnishing adequate surety bonds/other terms and conditions, in accordance with law.

Disposed of.

27.11.2018

geeta

(Arvind Singh Sangwan)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No