

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

CRR No. 1027 of 2019 (O&M)

Date of decision: 06.11.2019

Karnail Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Madan Sandhu, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the order dated 26.02.2019, vide which, the trial Court/Additional Sessions Judge, Panchkula has dismissed the application filed by the petitioner seeking release of the truck bearing registration No. HR-68-A-1341 on *Supardari* in favour of the registered owner.

Learned counsel for the petitioner submits that the truck in dispute was seized by the police during the time when the accused persons were arrested in FIR No. 364 dated 16.12.2017, registered under Section 15 of the NDPS Act, 1985 at Police Station Pinjore, District Panchkula.

Learned counsel for the petitioner further submits that the said truck is in possession of the police since 16.12.2017 and the same is lying unused in the police station.

It is further submitted that out of total 17 prosecution witnesses, only 02 witnesses have been examined so far and it will take a long time in

conclusion of the trial.

Learned counsel for the petitioner relies upon the judgment rendered by a Division Bench of this Court in ***Gurbinder Singh @ Shinder vs. State of Punjab, 2016 (4) RCR (Criminal) 492***, wherein while dealing with the provisions of Section 451 Cr.P.C. for release of seized vehicle in the cases under the NDPS Act, the following observations were made:

“6. Learned counsel appearing for the revision petitioner drew the attention of this Court to the landmark judgement in ***Sunderbhai Ambalal Desai vs. State of Gujarat, 2003(1) RCR (Criminal) 380*** and submitted that the Court has to invoke the provision under Section 451 Cr.P.C. for release of the vehicle, as otherwise, the vehicle parked in the open space will go waste. It is her further submission that the vehicle cannot be kept parked till the Addl. Sessions Judge, Amritsar reaches a conclusion in the trial after affording opportunity to the petitioner that the vehicle is liable to confiscation. Inasmuch as there is no specific bar under the NDPS Act, 1985, the provisions under Section 451 Cr.P.C. will have to be resorted to for releasing the vehicle for interim custody, it was contended. 7. Learned State counsel vehemently submitted that the vehicle seized under NDPS Act is liable to be confiscated. As observed by the Addl. Sessions Judge, Amritsar the vehicle would be required for exhibition during the course of trial. At any rate, the respondent has no objection in releasing the vehicle for interim custody, it was submitted. 8. Let us first deal with the relevant provisions under the Cr.P.C. which have bearing on the issue involved. Sections 451 and 452 and 457 Cr.P.C. read 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 an 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.

452. Order for disposal of property at conclusion of trial. – (1) When an inquiry or trial in any Criminal Court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. (2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the court, engaging to restore such property to the court if the order made under sub-section (1) is modified or set aside on appeal or revision. (3) A Court of Session may, instead of itself making an order under

sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459. (4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under subsection (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of. (5) In this section, the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

457. Procedure by police upon seizure of property.— (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the

articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

9. On a bare perusal of the above three provisions, one can come to a conclusion that each of those provisions deal with a different situation. Section 451 Cr.P.C. deals with interim custody of the seized property which has been produced before the Court. Section 452 Cr.P.C. speaks of the disposal of the seized property after enquiry or trial in a criminal Court is concluded. Section 457 Cr.P.C. applies to a situation where the property which has been seized by the police was not produced before the Court. 10. In the landmark judgement in *Sunderbhai Ambalal Desai's case* (supra), the Hon'ble Supreme Court took serious note of the fact that a large number of seized vehicles and articles were kept in the police station totally unattended. Finding that there was no use to keep such seized vehicles at the police station for a long period, the Hon'ble Supreme Court directed the Judicial Magistrates to exercise the powers under Section 451 Cr.P.C. expeditiously and judiciously and entrust interim custody of articles and vehicles seized to the owner of the property or to the person who is entitled to be in possession of the property. The Hon'ble Supreme Court also made an observation that if the powers under Section 451 Cr.P.C. are judiciously exercised, the owner of the property would not suffer because of its remaining unused or by its misappropriation. Further, the Court or the police would not be required to keep the articles in safe custody. If proper panchnama before handing over the possession of the article is prepared, that can be used in evidence instead of its production of article before the Court during trial.

11. The question that arises for determination is whether Section 451 Cr.P.C. can be applied while considering the plea for interim custody of the vehicle seized under the NDPS Act. Section 51 of the NDPS Act which has a bearing on this issue reads as follows:-

“51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and Seizures .- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.” As regards the seizure of any article or thing, the provisions of Cr.P.C. shall apply if it is not inconsistent with the provisions of NDPS Act.”

12. On a thorough perusal of the various provisions under the NDPS Act, we find that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under Section 451 Cr.P.C. is not inconsistent with any specific provision under NDPS Act, the same will have to be applied as mandated under Section 51 of the said Act. 13. A vehicle used for committing rape and murder is being released in the garb of Section 451 Cr.P.C. as interpreted by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai's case (supra). When the vehicles seized in such heinous crimes are released for interim custody, there is no logic in denying interim custody of the vehicle seized under the NDPS Act. Neither the State nor the owner of the vehicle is going to be benefited if the vehicle in the premises of the police station occupies a larger space posing inconvenience to the Police Department. Further, it is an open secret that when a vehicle is parked unattended, the valuable parts of the vehicle are casually

taken away or stolen. Finally, when the Court comes to a conclusion that the vehicle was used for committing the crime, the vehicle which was kept in the open would have substantially deteriorated. Likewise, if the Courts take a final decision that the vehicle was not at all used for commission of the crime or the vehicle was used without the knowledge of the owner thereof, the owner will have to collect only the scrap of the vehicle. In other words, nobody is going to be benefited out of idle parking of vehicle totally unattended in the premises of the police station. 14. Sections 60(3) and 63 of NDPS Act also have relevance to the issue involved in this case for determination. Section 60(3) and Section 63 of the NDPS Act reads as follows:-

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) xxxxx

(2) xxxxx

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscation.- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharge, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62, and, if it decides that

the article is so liable, it may order, confiscation accordingly. (2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly: Provided that no order of confiscation of an article or thing shall be made until the expiry of one month, from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim: Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance [or controlled substance] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

15. A conveyance seized under the NDPS Act shall be liable to confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the NDPS Act is liable to confiscation only on conclusion of trial. The trial Court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But, at any rate, the trial Court is not supposed to pass any order of confiscation before expiry of one month from the date of

seizure or without affording opportunity to the claimant.

16. On a perusal of the above provisions under the NDPS Act, we find that the trial Court has to take a decision as to whether a vehicle is liable to confiscation only on conclusion of the trial. A vehicle seized under the NDPS Act cannot be kept idle to the disadvantage of everyone concerned till the order of confiscation is passed on conclusion of trial.”

Learned counsel for the petitioner further submits that the truck in question is lying unused in the police station and with the passage of time, it will reduce into junk and will become unfit for transportation.

Learned counsel for the petitioner further submits that the said truck is a commercial vehicle and the same was being used for earning livelihood of the petitioner, who is the registered owner of the same.

Learned counsel for the petitioner further submits that the petitioner is ready to any specific undertaking with surety bonds as required by the trial Court and will further give undertaking that he will produce the said truck before the trial Court as and when required during the course of trial.

Learned State counsel, on the basis of the reply filed by way of affidavit of the Assistant Commissioner of Police, Kalka, does not dispute the fact that the petitioner is the registered owner of the said truck and the same was taken in possession by the police, vide recovery memo dated 16.12.2017 and submits that since the truck is a case property and is required during the course of trial, the present petition may be dismissed.

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

It is undisputed that the petitioner is the registered owner of the said truck which was taken in possession by the police at the time of registration of the aforesaid FIR.

It is also not disputed that for the last about two years, the said truck is lying in the premises of the police station concerned and the petitioner has purchased the same by way of finance and he is paying the installments to the financier and, therefore, the petitioner is not earning anything from the truck, rather he is paying his liability.

Therefore, in view of the aforesaid facts and circumstances and also in view of the judgment rendered in ***Gurbinder Singh @ Shinder's case (supra)***, the present revision petition is allowed and impugned dated 26.02.2019, passed by the trial Court/Additional Sessions Judge, Panchkula, is hereby set aside.

The trial Court is directed to release the truck in question on *Supardari* to the petitioner, who is the registered owner of the same, on such terms and conditions as it may deem fit.

06.11.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No