

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

232

CRR-255-2019 (O&M)
Date of decision: 01.10.2020

Gopal Singh	Versus	Petitioner
State of Punjab		Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Neesh Garg, Advocate
for the petitioner.

Mr. Sukhbeer Singh, Asstt. A.G. Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video
conferencing.)

CM-23210-2020

For the reasons mentioned in the application, the same is
allowed and medical documents of elder brother of the petitioner are
taken on record.

CRR-255-2019 (O&M)

The petitioner has filed the present petition under Section
397 read with Section 401 of the Code of Criminal Procedure, 1973 (for
short 'the Cr.P.C.') for quashing/setting aside order dated 17.11.2018
passed by learned Judge, Special Court, Mansa in case FIR No.59 dated
24.04.2018 registered under Sections 21 and 25 of the Narcotic Drugs
and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") in
Police Station Sardulgarh, District Mansa whereby the application for
release of car bearing registration No.PB-31-P-0307 on Sapurdari was
dismissed.

2. Briefly stated, the facts giving rise to the filing of the present petition are that on 24.04.2018 police party headed by ASI Kulwant Singh conducted nakabandi on bridge of river Ghaggar in the area of Sardulgarh. Gurcharan Singh met ASI Kulwant Singh. In the meanwhile, car bearing registration No.PB-31-P-0307 driven by Ramandeep Singh @ Sonu came from the side of City Sardulgarh. On seeing the police party Ramandeep Singh @ Sonu tried to turn back the car. Ramandeep Singh @ Sonu was apprehended and on search 10 grams of heroin rapped in polythene was recovered from the pocket of the shirt worn by him. The above-said FIR was registered against accused Ramandeep Singh @ Sonu who was arrested and contraband along with sample seized from his possession as well as the car bearing registration No.PB-031-P-0307 in which he was travelling were taken into possession by the police.

3. The petitioner, being registered owner of the above said car, filed application for its release on Sapurdari which was dismissed by learned Judge, Special Court, Mansa vide order dated 17.11.2018 on the grounds that 10 grams of heroin was recovered from Ramandeep Singh @ Sonu who is son of the petitioner and was driving the car in question at the time of recovery. The car in question was used as conveyance for carrying narcotic substance and is liable to confiscation under Section 60 of the NDPS Act.

4. Feeling aggrieved, the petitioner has filed the present revision petition for quashing/setting aside of the above said order.

5. The petition has been opposed by learned State counsel.

However, no reply has been filed by the respondent-State.

6. I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

7. Ms. Neesh Garg, learned Counsel for the petitioner has submitted that Ramandeep Singh @ Sonu was falsely implicated in the in the case under the NDPS Act. Even, as per allegations made in the FIR the alleged recovery was made from the pocket of shirt of accused Ramandeep Singh @ Sonu and nothing was recovered from the car in question which cannot be said to have been used for carrying the narcotic drug. The vehicle is parked in the Police Station premises in the open since the day it was seized by the investigating agency and will become junk and go waste. The car can be confiscated only after affording opportunity of being heard to the petitioner. There is no provision under the NDPS Act debarring the release of the vehicle on sapurdari. The learned trial Court has wrongly dismissed the application of the petitioner. The impugned order suffers from material illegality. Therefore, the petition may be allowed, the impugned order may be set aside and the car in question may be ordered to be released on sapurdari.

8. On the other hand, Mr. Sukhbeer Singh, Asstt. A.G. Punjab, learned State Counsel has argued that the car in question was used by accused-Ramandeep Singh, son of the petitioner, for carrying narcotic drug and being liable to confiscation cannot be ordered to be released on sapurdari. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed.

9. In *Raghbir Singh alias Beera Vs. State of Punjab : 2006*

(4) RCR (Criminal) 343; Rajesh Kumar Vs. State of Haryana :

2007(2) RCR (Criminal) 561 and Iqbal Singh Vs. State of Punjab :
2013(2) RCR (Criminal) 612 the vehicles seized under the NDPS Act case were ordered to be released on **sapurdari** by Single Benches of this Court. However contrary view was taken by a Single Bench of this Court in **CRR No.3231 of 2014 titled as Kirandeep Vs. State of Punjab decided on 12.12.2014** that in view of liability to confiscation, the vehicle seized under the NDPS Act case could not be released on sapurdari. In view of the conflict, reference was made to Division Bench in **CRR No.1765 of 2015 titled as Gurbinder Singh @ Shinder Vs. State of Punjab decided on 19.09.2016 reported as 2016 (4) RCR (Crl.) 492.** The Division Bench held that the vehicle used for transporting the narcotic drugs and psychotropic substances can also be released on sapurdari by invoking the provision under Section 451 of the Cr.P.C. The concluding observations made by the Division Bench in that case are reproduced as under:-

“21. 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.”

10. In *CRM-M-46869-2019 (O&M) titled as Tej Singh Vs. State of Haryana decided on 13.02.2020* this Court on a detailed reference to the relevant statutory provisions and the above-referred judgments ordered release of car seized under the provisions of the NDPS Act on sapurdari on additional conditions besides usual terms.

11. In the present case also, if the car in question is retained on the ground of being case property liable to confiscation and kept idle in the police station, then the same is likely to be converted into junk. Any public auction of the car in question is not only likely to take long time but may also not fetch amount higher than the reserved price. In case the car in question is released on sapurdari on usual terms and conditions to be returned on confiscation, passing of final order for confiscation of the car in question may also take such long time that the car in question may become wholly unserviceable, complete junk and of no use for being taken over by the state on such confiscation. In these facts and circumstances it will be appropriate that the car is released on sapurdari to the registered owner on additional conditions, besides usual terms and conditions that the registered owner will not use or allow any person to use the car in question at the time of its seizure for commission of any offence including offence under the NDPS Act and that he will deposit the market price of the car in question as determinable under the Income Tax Act/Rules in case of passing of order for its confiscation under section of the NDPS Act

12. In view of the above discussion, the present revision petition is allowed and the car in dispute bearing registration No.PB-31-P-0307 is ordered to be released on sapurdari to the petitioner being

its registered owner on furnishing sapurdginama to the satisfaction of learned Judge, Special Court, Mansa on the conditions (i) that he will preserve the said car in the same condition during the pendency of the trial; (ii) that he will not dispose of the same during the pendency of the trial; (iii) that he will produce the same in the trial Court as and when so ordered by the trial Court (iv) that he will not use or allow any person to use the car in question for commission of any offence including offence under the NDPS Act and (v) that he will deposit the market price of the car in question at the time of its seizure as determinable under the Income Tax/Act Rules in case of passing of order for its confiscation under Section 60 of the NDPS Act.

13. A copy of this order be sent to learned Judge, Special Court, Mansa for requisite compliance.

01.10.2020

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(ARUN KUMAR TYAGI)
JUDGE

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