

CRM-M-34246-2019

DECIDED ON: JUNE 29, 2020

SURINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Charanpreet Singh, Advocate
for the petitioner.

Mr. Gaurav Dhuriwala, Sr. DAG, Punjab.

AVNEESH JHINGAN, J (ORAL)

The matter has been taken up for hearing through video conferencing due to COVID-19 situation.

The present petition is filed being aggrieved of the order dated 20.04.2019 passed by Additional Sessions Judge, SBS Nagar dismissing the application for releasing the vehicle bearing registration No. PB-08-BE-1200 on superdari, in FIR No. 02, dated 17.01.2019, under Section 21, 25 and 29 of NDPS Act, 1985, registered at Police Station Mukandpur.

Learned counsel for the petitioner relies upon the decision of this Court rendered in CRR No. 4901 of 2017. The operative portion is reproduced below:-

“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."

Learned counsel for the petitioner submits that petitioner is ready to furnish surety bond as per the present value of the vehicle.

Learned State counsel opposes the prayer stating that recovery was made from the persons who were using the said vehicle.

Considering the afore-said decision of this Court, the order dated 20.04.2019 is set aside and the trial Court is directed to release the vehicle in question on Superdari on furnishing adequate surety bonds as per the present value of the vehicle.

Disposed of.

JUNE 29, 2020
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>