

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

**CWP-22179-2019 (O&M)
Date of Decision:21.12.2020**

Rajesh Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Baljeet Beniwal, Advocate for the petitioner.

Mr. Sharan Sethi, Additional Advocate General, Haryana.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Challenge in the instant petition is to the order dated 05.11.2018 (Annexure P-1) passed by the Sub Divisional Magistrate, Hodal declining the application filed by the petitioner seeking release of vehicle No.UP-81-CT-1777 on superdari. Further challenge is to the order dated 08.07.2019 passed by the Deputy Commissioner, Palwal (Annexure P-3) affirming the order passed by the Sub Divisional Magistrate, Hodal.

Counsel for the parties have been heard.

Brief facts are that FIR No.500, dated 05.10.2018, under Sections 279/336 IPC, Sections 11/59/60 of the Prevention of Cruelty to Animals Act and Section 5/13(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 was registered at Police Station Hodal on the

allegations that the vehicle in question was being used to smuggle three oxen with intention to slaughter.

Petitioner is stated to be the owner of the vehicle and accordingly had filed the application seeking release of the same on superdari and which stands declined by the Sub Divisional Magistrate, Hodal and such view has been affirmed by the Deputy Commissioner, Palwal in terms of passing of the impugned orders.

Confiscation of the vehicle has been directed by the Sub Divisional Magistrate, Hodal vide order at Annexure P-1 and the operative part whereof reads in the following terms:

“I listened carefully to both sides and noticed the file carefully. After noticing it, I found that the vehicle bearing number UP-81CT-1777 has been seized in which 3 oxen were found in case FIR No.500 dated 05.10.2018 under Sections 279/336 IPC 11, 59, 60 Act, 5, 13(2) Act. Accused has not presented any evidence in favor of himself. I have gone through the present case and statements of Investigation Officer and considering the above mentioned case, I ordered to impound the above mentioned vehicle UP-81-CT-1777 under Section 17(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Animal Cruelty Act. The copy of the ame to sent to the incharge of police station Hodal. The file to be consigned in the record room. Both the parties are at liberty to file appeal in appropriate court.

*Sd./-SDM
Hodal”*

The power of confiscation of the vehicle at the hands of the “Competent Authority” is under Section 17(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter to be referred to as 'the 2015 Act') and which reads as follows:

"Section-17(2): Where any vehicle referred to in sub-section (1) is seized in connection with the commission of any offence punishable under this Act, a report about the same, without unreasonable delay, shall be made by the person seizing it to the competent authority and whether or not a prosecution is instituted for commission of such offence, the competent authority, having jurisdiction over the area where the said vehicle was seized, may, if satisfied that the said vehicle was used for commission of offence under this Act, order confiscation of the said vehicle.

Provided that before ordering confiscation of the said vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle."

Competent Authority is defined under Section 2(d) of the 2015 Act to mean the concerned Sub Divisional Magistrate and includes any other officer appointed by the Government for exercising of the power under the Act.

Under Section 17(2) of the 2015 Act, the Competent Authority is empowered to confiscate the vehicle after being satisfied that such vehicle was used for commission of offence under the Act. Bare reading of the operative part of the order reproduced herein above would make it clear that no such satisfaction has been recorded in the order dated 05.11.2018 passed by the Sub Divisional Magistrate, Hodal (Annexure P-1). Such aspect has been overlooked even by the Deputy Commissioner, Palwal while passing the order dated 08.07.2019 (Annexure P-3).

The impugned orders, as such, cannot sustain.

Even otherwise, Section 13 of the 2015 Act lays down the Offences under the Act. Under Section 13(2), any person, who contravenes and attempts to contravene or abets the contravention of the provisions of

Section 5 shall be guilty of an offence punishable with rigorous imprisonment for a term which shall not be less than three years and may extend to seven years and fine which shall not be less than Rs.30,000/- and may extend to Rs.70,000/-. Section 5 lays down restriction on export and mandates that no person shall export or cause to be exported cow for the purposes of slaughter either directly or through his agent or servant or any other person acting on his behalf in contravention of the provisions of the Act or with the knowledge that it shall be or is likely to be slaughtered. Section 15 of the 2015 Act lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under Section 13 shall be cognizable and non-bailable.

Learned State counsel admits that the provisions of the Code of Criminal Procedure would apply.

A Division Bench of this Court in **Gurbinder Singh @ Shinder Vs. State of Punjab, 2016(4) RCR (Criminal) 492** examined the issue as regards release of vehicles during pendency of the trial under the NDPS Act. View taken was that in the light of Sections 451/452/457 Cr.P.C., the vehicles in question can be released on superdari as nobody can be benefited out of idle parking of the vehicle unattended in the premises of the police station.

Relevant portion of the said judgment reads as under:

*"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 For Subsequent orders see CRM-23019-2016 8 of 14 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.

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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.”

In the considered view of this Court, no useful purpose will be served as such to keep the vehicle in question in the police station during pendency of the trial of the FIR.

At this stage, submission advanced by learned State counsel would require notice that the vehicle belongs to Uttar Pradesh and in case the same is released, it would be difficult/unlikely to get possession of the same in case the allegations are proved.

Counsel for the petitioner has met such objection by submitting that the petitioner is ready and willing to furnish a security amount of

Rs.50,000/- for release of the vehicle in question on superdari.

For the reasons recorded above, present petition is allowed.

Orders dated 05.11.2018 (Annexure P-1) passed by the Sub Divisional Magistrate, Hodal and 08.07.2019 (Annexure P-3) passed by the Deputy Commissioner, Palwal are set aside. The vehicle in question is ordered to be released on superdari to the petitioner subject to his furnishing proof of ownership and complying with other formalities as also upon furnishing a security amount of Rs.50,000/-.

Petition is allowed in the aforesaid terms.

21.12.2020

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) Whether speaking/reasoned? | Yes/No |
| ii) Whether reportable? | Yes/No |