

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

120

CRM-M-46869-2019 (O&M)

Date of decision: 13.02.2020

Tej Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Kamal Chaudhary, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, Asstt. A.G., Haryana
for the respondent.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing/setting aside order dated 01.10.2019 passed by learned Additional Sessions Judge, Panchkula in case FIR No.219 dated 11.07.2019 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") at Police Station Chandimandir, District Panchkula whereby the application for release of car bearing registration No.HP-66A-2157 on Sapurdari was dismissed.

2. Briefly stated, the facts giving rise to the filing of the present petition are that on 11.07.2019, ASI Rajesh Kumar along with other police officials mentioned in the FIR conducted nakabandi on the basis of secret information that accused Birbal who is habitual of selling charas in Panchkula was bringing charas in car bearing registration No.HP-66A-2157 and stopped the above said car and on

search in the presence of Om Parkash, HPS, Assistant Commissioner of Police, Panchkula as per the prescribed procedure recovered 800 grams of charas kept in a polythene wrapped in parna worn by him around his neck under his green t-shirt. The FIR was registered against the petitioner and the petitioner was arrested and contraband along with sample seized from his possession as well as the car bearing registration No.HP-66A-2157 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 Additional Sessions Judge, Panchkula vide order dated 01.10.2019 on the ground that 800 grams of charas was recovered from the accused who was driving the car in question and the investigation in the case was still pending and the challan was yet to be presented.

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

5. Reply by way of affidavit of Sh. Satish Kumar HPS, Assistant Commissioner of Police, Panchkula has been filed on behalf of the State in the Court which is taken on record. In the reply it has been submitted that the car in question was used by brother of the petitioner for sale of charas in Panchkula and the car in question is case property. The application for release of the car on sapurdari has been rightly dismissed by the learned Additional Sessions Judge, Panchkula by passing well reasoned order as per provisions of law.

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

7. Mr. Kamal Chaudhary, learned Counsel for the petitioner has submitted that the petitioner belongs to a poor family and the car in question is used by the petitioner and his brother for their day to day work. The alleged recovery has been made from accused Birbal and nothing has been recovered from the car in question. 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 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. Arjun Singh Yadav, learned State Counsel has argued that the car in question was used by accused-Birbal, brother of the petitioner, for sale of charas in Panchkula and is case property liable to confiscation and cannot be released on sapurdari. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed.

9. Section 451 of the Cr.P.C., which empowers the Court to pass order for custody and disposal of property pending trial, reads as under:-

“When any property is produced before any Criminal Court during any 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.”*

10. Section 452 of the Cr.P.C., which empowers the Court to pass order for disposal of property at conclusion of trial, reads as under:-

“(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 sub-section (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.”

11. Section 457 of the Cr.P.C., which lays down the procedure to be followed by police upon seizure of property, provides as under:-

“(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.”

12. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts etc., Hon’ble Supreme Court observed in ***Sunderbhai Ambalal Desai Vs. State of Gujarat : 2002 (10) SCC 283*** as under :-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be

informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

13. In ***General Insurance Council Vs. State of Andhra Pradesh (SC) : 2010 (6) SCC 768*** in view of the mandate of Section 451 read with Section 457 of the Cr.P.C., Hon'ble Supreme Court considered it necessary that in addition to the directions issued in ***Sunderbhai Ambalal Desai's Case (supra)*** the following further directions with regard to seized vehicles are also required to be given:-

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

14. While giving the additional directions reproduced above Hon'ble Supreme Court also observed as under:-

"15. It is a matter of common knowledge that as and when

vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.”

15. In compliance with the directions/guidelines issued by Hon'ble Supreme Court in ***General Insurance Council and Others Vs. State of Andhra Pradesh and others : 2010 (6) Supreme Court Cases 768***, as submitted on affidavits in ***CRM No. 32472 of 2018; CRM No. 8179 of 2019 in CRA-D No. 743-DB of 2018***, the Director-General of Police, Punjab vide order No.7295-7342/CR-L A-V dated 05.06.2015 constituted a Committee headed by Director, Bureau of Investigation, Punjab with all Zonal Inspector Generals of Police, Commissioners of Police, Inspector General of Police-NRI Affairs, and Asst Inspector General of Police-GRP, Punjab as members to ensure macro implementation of the provisions of Sections 451 and 457 of the CrPC for disposal of properties, vehicles etc. lying in the police stations. In the State of Haryana, Standing Order No. 130 of 2010 was issued by the Director-General of Police, Haryana to all field units in Haryana. Fresh instructions to comply with the judgements of Hon'ble Supreme

Court dated 01.10.2002 and 19.04.2010 and standing order No.130 of 2010 were issued vide letter dated 22.03.2019. In U.T. Chandigarh Standing Order No. 50 of 2011 was issued by the Inspector General of Police, U.T., Chandigarh.

16. It may also be observed here that in ***Raghubir 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 observations made by the Division Bench in that case are reproduced 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 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 subsection 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.

17. Learned Single Judge of this Court in ***CRR No.3231 of 2014 Kirandeep v. State of Punjab decided on 12.12.2014***, having relied upon the decision of the Hon'ble Supreme Court in ***Union of India v. Dinesh Kumar Verma, 2005(9) SCC 330*** and judgement of the Division Bench of this Court in ***Tarsem Singh v. State of Punjab, 2005(4) RCR (Criminal) 300***, held that release of the vehicle seized under the NDPS Act during the trial of the case is in violation of the provisions of the NDPS Act, 1985 and that therefore, the question of interfering with the decision taken by learned Special Judge not to release the vehicle for interim custody does not arise for consideration.

18. A brief judgement in ***Union of India v. Dinesh Kumar Verma, 2005(9) SCC 330***, reads as follows:-

"Heard the counsel for the parties.

2. Leave granted.

3. By the impugned order, the High Court has directed the release of the vehicle during trial of the accused for violation of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Narcotic Drugs and Psychotropic Substances Act). In our view, in the facts and circumstances of the present case, the High Court was not justified in releasing the vehicle.

4. Accordingly, the appeal is allowed, the impugned order rendered by the High Court is set aside and the prayer for release of vehicle made on behalf of the respondent is rejected. The respondent is directed to surrender the vehicle within a period of one month from today, failing which it would be open to the police to seize the same and report compliance of this Court within a period of six weeks from today.

Appeal allowed."

19. On a careful perusal of the above observation made by the Hon'ble Supreme Court, we find that no distinction was made between the vehicles seized under the Scheme of Cr.P.C. and the vehicles seized under the NDPS Act. In the special facts and circumstances of that case, the Hon'ble Supreme Court came to a conclusion that the High Court was not justified in releasing the vehicle. The Hon'ble Supreme Court has not laid down in the above judgement that the vehicle seized under the NDPS Act is not to be released on sapurdari. There was also no specific observation that the vehicles seized under the NDPS Act will have to be treated separately while considering the plea for interim custody thereof. Therefore, the above observation made by Hon'ble Supreme Court cannot be cited for rejecting the plea for release of the vehicle seized under the NDPS Act on sapurdari. In Tarsem Singh's case

(supra), a totally different issue as to whether a Sub Divisional Judicial Magistrate who was not the Special Judge conferred with the power to try the case under the NDPS Act could pass an order releasing the vehicle on sapurdari had arisen for determination. In the aforesaid case, the Division Bench of this Court has not made any observation that the trial Judge empowered to try the case under the NDPS Act has no authority to release the vehicle for interim custody on sapurdari. Nor was any decision taken in the said case that the vehicle seized under the NDPS Act cannot at all be released on sapurdari.

20. Therefore, in our view, the decision taken by the learned Single Judge of this Court in CRR No.3231 of 2014 on 12.12.2014 based on the decision in Dinesh Kumar Verma's case (supra) does not reflect the correct proposition of law. In fact, the views taken by the learned Single Judges of this Court in ***Rajesh Kumar v. State of Haryana, 2007 (2) RCR (Criminal) 561***, ***Iqbal Singh v. State of Punjab, 2013(2) RCR (Criminal) 612*** and ***Raghubir Singh alias Beera v. State of Punjab, 2006(4) RCR (Criminal) 343***, reflect the correct proposition of law.

21. In the above facts and circumstances, 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.”

17. In the present case, 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 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 Rules in case of passing of order for its confiscation under section of the NDPS Act

18. In view of the above discussion, the present petition under Section 482 of the Cr.P.C. is allowed and the car in dispute bearing registration No. HP-66A-2157 is ordered to be released on sapurdari to its registered owner on furnishing sapurdginama to the satisfaction of learned Judge, Special Court, Panchkula 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 as determinable under the Income

Tax Rules in case of passing of order for its confiscation under Section 60 of the NDPS Act.

19. A copy of this order be sent to learned Additional Sessions Judge, Panchkula for requisite compliance.

13.02.2020

Vinay/kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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