

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

CRM-M-2170-2021
Date of Decision :19.05.2021.

Vishal ...Petitioner

Versus

State of Haryana ...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. C.R. Olla, Advocate for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J.

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 482 Cr.P.C. is for quashing of order Annexure P/1 dated 22.12.2020, passed by the learned Addl. Sessions Judge, Kurukshetra, in case FIR No.680 dated 10.11.2020, registered at Police Station Shahabad, under Sections 20-61-85 of the Narcotics Drugs and Psychotropic Substances Act, 1985, whereby the application filed by the petitioner for release of Innova vehicle bearing registration No.HR-26-BC-3170, engine No.18147, Chassis No.17443, Model-2010, on Superdari, was dismissed.
3. Learned counsel for the petitioner contends that the action of the learned Addl. Sessions Judge, Kurukshetra, in dismissing the application for release of the aforementioned vehicle on Superdari, is legally unsustainable, as the application was rejected merely on the ground that the

Superdari, besides two more cases were already registered against the petitioner under the Narcotic Drugs and Psychotropic Substances Act, 1985, whereas in reality, the petitioner had been acquitted by the learned trial Court in one case while in the other case, trial was pending and in both the cases, the quantity involved was small. Moreover, the vehicle in question was not involved in the aforesaid cases. Learned counsel further contends that the aforementioned vehicle which belongs to the petitioner was taken into possession by the police and no useful purpose would be served by keeping the same parked in Police Station Shahabad as its condition would deteriorate day by day due to weather conditions and lying in the open. Learned counsel contends that the petitioner is the registered owner of the vehicle in question and undertakes not to alienate the same nor to change the conditions and colour thereof till the final disposal of the case and will produce the same in Court as and when directed by the learned trial Court. Learned counsel relies upon the decision of this Court in **Nirmal Singh vs State of Punjab 2007 (1) RCR (Criminal) 986**, **Resham Singh vs. State of Punjab 2017 (1) Law Herald 319** and **Mandeep Singh vs. State of Punjab and another 2017 (4) Law Herald 3405**.

4. Learned DAG, Haryana, on the other hand, contends that the petitioner is a habitual offender and apart from the instant case, there are two other cases under the NDPS Act, registered against the petitioner and that in the eventuality of the vehicle in question being released on Superdari in favour of the petitioner, he may again commit similar offence.

5. I have considered the submissions of learned counsel for the parties.

6. It is not the stand of learned DAG, Haryana, that confiscation proceedings regarding the vehicle in question have been started.

Undoubtedly in **Gurbinder Singh alias Shinder vs. State of Punjab 2016 (4) RCR (Criminal) 492**, Hon'ble the Division Bench of this Court held that a vehicle seized under the NDPS Act can be released on Superdari under Section 451 Cr.P.C., as neither the State nor the owner of the vehicle would stand to benefit if the vehicle remained parked in the premises of the police station as there were chances that by allowing the vehicle to remain parked in the police station, the vehicle would suffer damage and would also likely suffer loss of parts. Hon'ble the Division Bench while holding that a vehicle seized under the NDPS Act can be released on Superdari under Section 451 Cr.P.C. took into account the decision of Hon'ble the Supreme Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat 2003 (1) RCR (Criminal) 380**. Relevant extract of the decision of Hon'ble the Division Bench in Gurbinder Singh alias Shinder's case (supra) is reproduced as under:-

“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.

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."

7. Hon'ble the Division Bench held that a conveyance seized under the NDPS Act is liable to be confiscated only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was being used without his knowledge or connivance and that the Court will have to decide whether a vehicle seized under the NDPS Act is liable to confiscation only on conclusion of trial and the trial Court has to take independent decision on the question of confiscation irrespective of the conviction, acquittal or discharge recorded. Hon'ble the Division Bench while taking into account the provisions of Sections 60(3) and 63 of the NDPS Act

held that the trial Court had to take a decision as to whether a vehicle was

liable to be confiscated, only on conclusion of the trial and that a vehicle seized under the NDPS Act could not be kept idle to the disadvantage of everyone concerned till the order of confiscation was passed on the conclusion of trial.

Section 60 (3) and 63 of the NDPS Act are reproduced as under:-

"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."

8. It is also not in dispute that the petitioner has already been released on anticipatory bail vide order dated 03.12.2020 in CRM-M-40219-2020 which order was subsequently confirmed on 24.03.2021. In view of the fact that confiscation proceedings regarding the vehicle in question have not yet started, therefore, if the vehicle is allowed to stand in the police station, the same would become unfit for being plied on the road as its machinery, tyres etc. would be damaged as trial of the case is likely to take a long time to conclude. Accordingly, no useful purpose would be served by allowing the vehicle to remain parked in the premises of the police station.

9. Learned counsel for the petitioner reiterates that the petitioner would give whatever undertaking is directed to be given by this Court and would also produce the vehicle before the learned trial Court as and when directed and would not alienate the same or change its conditions and colour etc.

10. In view of the position as noted above as also taking into account that the vehicle in question is involved in a case under the NDPS Act only in the instant case besides if not released on Superdari, the same would continue to remain parked in the police station thereby rendering it unfit for being plied on the road after lapse of certain period of time, as keeping it parked in the sun and rain would certainly damage its tyres, colour, machinery, battery as also the interior of the vehicles besides the confiscation proceedings would take considerable period of time as the trial would take considerable period of time on account of circumstances

prevailing due to Corona Virus pandemic, therefore the impugned order dated 22.12.2020, passed by the learned Addl. Sessions Judge, Kurukshetra, is set aside and vehicle bearing registration No.HR-26-BC-3170, make Innova, is directed to be released on Superdari to the petitioner/registered owner on usual terms and conditions subject to the petitioner / registered owner executing personal bonds in the sum of Rs.4 Lakh with one surety of like amount to the satisfaction of the learned trial Court, with an undertaking that as and when the trial Court would require the said vehicle, he would produce the same before the learned trial Court on his own cost and he shall also furnish an undertaking that in future he will not use nor permit its use for commission of an offence under the NDPS Act and in case of involvement of the petitioner or the aforementioned vehicle in a case under the NDPS Act, it would be open to the prosecution to move an application for cancellation of the order releasing the vehicle on Superdari.

11. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

19.05.2021
'rajesh'

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