

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

CWP No. 3797 of 2021

Date of Decision: September 15, 2021

RAGHAV RASTOGI

.... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Sharan Sethi, Addl. A.G., Haryana.

LISA GILL, J.(oral)

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

Prayer in this writ petition is for setting aside orders dated 07.12.2020, passed by learned Deputy Commissioner, Palwal (Annexure P3) and 25.09.2020, passed by learned SDJM, Hodal, Tehsil Hodal, District Palwal (Annexure P2), whereby petitioner's car bearing registration No. UP16-AJ-2324, Volkswagen, stated to be a 2013 model, has been seized under Sections 13(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Section 11 of the Animals Cruelty Act, 1990 (for short the Act) and petitioner's prayer for release of the said car on supardari to him has been rejected.

Heard learned counsel for the parties.

FIR No.235 dated 08.07.2020, under Section 11 of Prevention of Cruelty to Animals Act, 1990 and Section 13(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, was registered with the allegations that present petitioner's car was used as a pilot vehicle to facilitate another vehicle wherein thirty two (32) heads of cattle were being transported for the purpose of slaughter. Vehicle belonging to the petitioner was impounded in the said FIR. Petitioner was admittedly not present at the spot.

Learned counsel for the petitioner submits that petitioner had in fact left the vehicle at a repair centre at Krula, Muradabad (UP) but later came to know that said car has been misused and that he has no connection with the offence in question. Petitioner, accordingly sought release of his vehicle on supardari on furnishing surety bonds. Petitioner's application was rejected by learned SDJM, Hodal, Tehsil Hodal, District Palwal vide order dated 25.09.2020 (Annexure P2) and petitioner's car alongwith another vehicle was seized. Petitioner's appeal against order dated 25.09.2020 was dismissed by the Deputy Commissioner, Palwal, vide order dated 07.12.2020 (Annexure P3). Aggrieved therefrom this writ petition has been filed.

It is relevant to note that despite various opportunities, reply on behalf of the respondents has not been filed. Matter has been pending since February 2021, after issuance of notice of motion. I do not find any

justification for further adjournment for the purpose of filing of reply/written statement and especially so in view of order dated 21.12.2020 in CWP-12279-2019, titled 'Rajesh Kumar Vs. State of Haryana'. Controversy involved in the said writ petition is almost identical to the issue at hand. Petitioner in CWP-12279-2019 also sought release of his vehicle on supardari. Said vehicle had been confiscated under Section 17(2) of the Act.

Learned counsel for the State is unable to deny that present matter is squarely covered by the said decision dated 21.12.2020, except to say that satisfaction regarding use of the vehicle in the alleged offence has been recorded in the present matter whereas it was not the case in Rajesh Kumar's case supra. However, such an objection is clearly not sustainable keeping in view the specific observations in order dated 21.12.2020, wherein reference to decision of a Division Bench of this High Court in **Gurbinder Singh @ Shinder Vs. State of Punjab, 2016(4) RCR (Criminal) 492**, has been made. Relevant portion of the decision of the Division Bench as reproduced in order dated 21.12.2020, 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.”

Accordingly it was held in the case of Rajesh Kumar supra, that no purpose would served by not releasing the vehicle on supardari and keeping the vehicle at the police station. Said writ petition was allowed.

Learned counsel for the State at this stage submits that as petitioner is a resident of Uttar Pradesh and vehicle is also registered in

Uttar Pradesh, it would be extremely difficult to secure possession of the same in case allegations are proved. Similar objection had been raised in the case of Rajesh Kumar also but vehicle was released subject to deposit of Rs.50,000/- surety.

Learned counsel for the petitioner submits that petitioner shall furnish a security amount of Rs.50,000/- for release of the vehicle on supardari.

Keeping in view the facts and circumstances as above, both the impugned orders dated 07.12.2020, passed by learned Deputy Commissioner, Palwal (Annexure P3) and 25.09.2020, passed by learned SDJM, Hodal, Tehsil Hodal, District Palwal (Annexure P2) are set aside. Vehicle in question be released on supardari to the petitioner, subject to his furnishing proof of ownership and compliance of all necessary formalities as decided by the learned SDJM, Hodal, Tehsil Hodal, District Palwal alongwith deposit of security amount of Rs.50,000/-.

This writ petition is accordingly disposed of.

September 15, 2021

Sunil

**(Lisa Gill)
Judge**

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