

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

CRM-M-39581-2021

Date of Decision: 18th November, 2021

Mange Ram @ Mangi

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Vikas Bishnoi Godara, Advocate
for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana
for the respondent-State.

AVNEESH JHINGAN , J.(Oral)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 filed seeking quashing of order dated 06.09.2021 passed by Ld. Special Judge, Fatehabad Under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') in case FIR No. 11 dated 12.01.2021, under Section 21B the Act, registered at Police Station Sadar Fatehabad, whereby the prayer for release of motorcycle bearing registration No.HR-59E-9051 seized at the time when accused was apprehended carrying 30.15 gram *heroin* was rejected.

2. Learned counsel for the petitioner submits that the motorcycle is lying in open space, the trial is at its initial stage, none of the prosecution witness has been examined, conclusion of the trial is likely to take time, the vehicle be released on sapurdari. He further submits that petitioner undertakes to produce the vehicle as and when required by the Court.

3. Learned State counsel defends the impugned order and submits that the vehicle under Section 60(3) of the Act can be confiscated.

Section 60 and Section 63 of the Act are quoted below:

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance 2[or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance 2[or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance 2[or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2[or controlled substances], 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.

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63. Procedure in making confiscations.

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, 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, 1[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.”

4. From the reading of Section 60(3) it is clear that the conveyance used for carrying NDPS substances shall be liable to be confiscation. The onus is on the owner to show that vehicle was being used without his connivance or his knowledge.

5. As per Section 63(1) the issue is to be decided in the trial irrespective of the fact that whether accused is acquitted or discharged and as to whether the seized articles are liable to be confiscation or not?

6. It is not disputed that till date there is no order of confiscation. No useful purpose would be served by keeping the vehicle in the police station during the pendency of the trial and depriving its owner of its usage in the meantime.

7. The Division Bench of this Court in the case of **Gurbinder**

Singh @ Shinder Vs. State of Punjab, 2016(4) R.C.R. (Criminal) 492

while dealing with a reference held that vehicle used for NDPS substance can be released on sapurdari.

8. The impugned order is set aside. The vehicle is ordered to be released on sapurdari. The Court concerned shall be at liberty to apply conditions as deemed as necessary for the release of the vehicle.

(AVNEESH JHINGAN)
JUDGE

18th November, 2021
Parveen Sharma

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