

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

231

**CRR-2412-2019**

**Date of decision: 16.02.2021**

Satnam Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Manu Loona, Advocate  
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab  
for the respondent-State.

\*\*\*\*\*

**ARUN KUMAR TYAGI, J (ORAL)**

(The case has been taken up for hearing through video conferencing.)

1. The petitioner has filed the present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing/setting aside order dated 08.07.2019 passed by learned Judge, Special Court, Fazilka in case FIR No.159 dated 24.10.2018 registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") in Police Station Sadar Fazilka, District Fazilka whereby the application for release of motorcycle bearing registration No.PB-22C-5443 on Sapurdari was dismissed.

2. Briefly stated, the facts giving rise to the filing of the present petition are that on 28.10.2018 police party headed by ASI Harbans Lal along with other police officials conducted barricading on Malout Fazilka road near village Korriya Wali at Pakka Link Road.

Two motorcycles driven by Sukhwinder Singh @ Ajju with Raj Singh @ Raju as pillion rider and Vinod Kumar with Jaswant Singh @ Babu as pillion rider came from the side of Village Korraa Wali. On seeing the barricades both the motorcyclists got scared and tried to quickly turn back their motorcycles. While turning back, both the motorcyclists collided with each other and the motorcyclists and the pillion riders fell down. On search poppy husk weighing 20 Kgs each was recovered from "Gatta" held by both the pillion riders. The contraband recovered along with the samples taken and the motorcycles were seized by the police.

3. The petitioner, being registered owner of motorcycle bearing registration No.PB-22C-5443, filed application for its release on Sapurdari which was dismissed by learned Judge, Special Court, Fazilka vide order dated 08.07.2019 on the grounds that the motorcycle in question was used as conveyance for carrying narcotic substance and is liable to confiscation under Section 60 of the NDPS Act.

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

5. The petition has been opposed by learned State Counsel. However, no reply has been filed by the respondent-State.

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

7. Learned Counsel for the petitioner has submitted that accused-Sukhwinder Singh @ Ajju had borrowed the motorcycle of the petitioner. The petitioner had no knowledge that his motorcycle would be used for such illegal activities. The motorcycle 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. No useful purpose will be served by keeping the seized motorcycle idle in police station for a long period as the seized vehicle will become junk. The learned trial Court has wrongly dismissed the application of the petitioner. The impugned order suffers from material illegality. Therefore, the petition may be allowed, the impugned order may be set aside and the motorcycle in question may be ordered to be released on sapurdari.

8. On the other hand, learned State Counsel has argued that the motorcycle in question was used by accused-Sukhwinder Singh @ Ajju for carrying narcotic substance and the same being liable to confiscation cannot be ordered to be released on sapurdari. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed.

9. In *Ragbir 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 concluding observations made by the Division Bench in that case are reproduced as under:-

*“21. .... 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.”*

10. In ***CRM-M-46869-2019 (O&M) titled as Tej Singh Vs. State of Haryana decided on 13.02.2020*** this Court on a detailed reference to the relevant statutory provisions and the above-referred judgments ordered release of car seized under the provisions of the NDPS Act on sapurdari on additional conditions besides usual terms.

11. In the present case also, if the motorcycle 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 motorcycle in question is not only

likely to take long time but may also not fetch amount higher than the reserved price. In case the motorcycle in question is released on sapurdari on usual terms and conditions to be returned on confiscation, passing of final order for confiscation of the motorcycle in question may also take such long time that the motorcycle 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 motorcycle 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 motorcycle in question for commission of any offence including offence under the NDPS Act and that he will deposit the market price of the motorcycle in question prevailing at the time of its seizure as determinable under the Income Tax Act/Rules in case of passing of order for its confiscation under Section 60 of the NDPS Act.

12. It follows from the above discussion the impugned order suffers from material illegality and is liable to be set aside.

13. Accordingly, the present revision petition is allowed and the motorcycle bearing registration No.PB-22C-5443 is ordered to be released on sapurdari to the petitioner being its registered owner on furnishing sapurdginama to the satisfaction of learned Judge, Special Court, Fazilka on the conditions (i) that he will preserve the said motorcycle 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 motorcycle in question for commission of any offence including offence under the NDPS Act and (v) that he will deposit the market price of the motorcycle in question, prevailing at the time of its seizure as determinable under the Income Tax/Act Rules, in case of passing of order for its confiscation under Section 60 of the NDPS Act.

14. A copy of this order be sent to learned Judge, Special Court, Fazilka for requisite compliance.

16.02.2021

kothiyal

(ARUN KUMAR TYAGI)  
JUDGE

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