

S.No.225

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

CRR-157-2022

Date of Decision:10.03.2022

Kulwinder Kaur

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Jasleen Kaur, Advocate for
Mr. Kanwar Inder Singh, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.

Challenge in the present revision petition is to the order dated 26.11.2021 vide which the application filed by the present petitioner for releasing Maruti S. Cross bearing registration No.PB-07-BX-5786 to the petitioner on superdari, has been dismissed.

Learned counsel for the petitioner has submitted that a perusal of the application dated 08.10.2021 would show that it has been specifically stated by the petitioner therein that she is owner of the said vehicle and the same was being sought to be released on superdari to her. Learned counsel for the petitioner has further submitted that two reasons had been given in the impugned order for rejecting the application of the petitioner. The first reason given was that the investigation in the present case was still pending at that point. It has been submitted in this respect, that the challan in the present case has already been presented on 24.12.2021 and, thus, the investigation in the present case is complete. The second reason given in the

impugned order was that in case the vehicle was released on supderdari, the same could be used for carrying intoxicant substances. It is submitted that the second reason which has been given, is given without there being any material on record to suggest the same and has been given on surmises and conjectures. Learned counsel for the petitioner has relied upon a judgment of the Co-ordinate Bench of this Court dated 19.05.2021 passed in CRM-M-2170-2021 titled as *Vishal v. State of Haryana* in which under similar circumstances, the application for release of the vehicle on superdari was allowed subject to certain conditions. It is further submitted that the petitioner is ready to comply with the said conditions and since 01.07.2021, the vehicle in question is lying in an open space and there is no parking space for the same and condition of the vehicle is also deteriorating on account of non-use. It is also submitted that no purpose would be served by keeping the vehicle in the custody of the authorities any further. Learned counsel for the petitioner has also submitted that in the present case, the vehicle has not been confiscated as yet.

Learned State Counsel has opposed the present petition and has stated that the impugned order has been passed in accordance with law.

This Court has heard learned counsel for the parties and has perused the record.

A co-ordinate Bench of this Court in the case of *Vishal (supra)* has observed as under:-

“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 petitioner may again commit similar offence, if the vehicle was released.*

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6. *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 3 of 7 CRM-M-2170-2021 [4] 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.”

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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 6 of 7 CRM-M-2170-2021 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.”

A perusal of the above judgment would show that the said case was also a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 and in the said case also, the release of the vehicle was primarily denied on account of the fact that there was an apprehension that the accused therein might commit a similar offence again, if the vehicle was released. In the said case, a co-ordinate Bench, after relying upon the judgment of the Division Bench of this Court in **Gurbinder Singh alias Shinder Vs. State of Punjab, 2016 (4) RCR (Criminal) 492,** has observed that even in the said judgment of the Division Bench, the judgment of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003(1) RCR (Criminal) 380,** was considered, wherein the Hon'ble Supreme Court has taken a serious note of the fact that large number of

seized vehicles and articles were kept in the Police Station totally unattended and finding that there was no use of keeping such seized vehicles at the Police Station for a long period, the Hon'ble Supreme Court had directed the Judicial Magistrates to exercise the power under Section 451 Cr.P.C expeditiously and judiciously and to entrust interim custody of articles and vehicles seized, to the owner of the property or to the person who was entitled to be in possession of the same. It was observed that the said principles would also apply to a case under the NDPS Act and it was further observed that it was an open secret that when a vehicle is parked unattended, the valuable parts of the vehicle are casually taken away or stolen. After considering the said aspects, the said application was allowed on execution of personal bonds and subject to other conditions. The judgment in the above-said case applies on all fours in the present case. It is the admitted case between the petitioner and the State that the challan has been presented on 24.12.2021 and, thus, the first reason of rejection stated in the impugned order to the effect that the investigation is pending does not survive anymore. The observation in the impugned order to the effect that the same can be re-used for carrying intoxicant substances is based on surmises and conjectures and there was no material to suggest the same. At any rate, the car in question is stated to be in the police custody since 01.07.2021 and is stated to be lying in an open space and the condition of the said vehicle is deteriorating and no useful purpose is being served in keeping the same in the said open space.

Thus, keeping in view the above-said facts and circumstances, as also the law laid down by the Co-ordinate Bench in the above-said

judgment, the present petition is allowed and the order dated 26.11.2021 is set aside and the Maruti S-Cross bearing registration No.PB-07-BX-5786, is ordered to be released on superdari to the petitioner, who is the registered owner, on usual terms and conditions, subject to the petitioner executing personal bonds in the sum of Rs.6 lakhs with one surety in the 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, the petitioner would produce the same before the learned trial Court on his own costs 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.

March 10, 2022
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(VIKAS BAHL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No