

(249) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9624-2022

Date of Decision: 21.11.2022

BATWINDER SINGH @ BUTA

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Kanika Ahuja, Advocate
for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 read with Sections 451 and 457 Cr.P.C. and Section 60(3) of the NDPS Act is for the quashing of the order dated 10.02.2022 (Annexure P-3) passed by the Additional Sessions Judge, Kurukshetra and to direct the release of the Maruti Swift LDI bearing registration No.PB11-CY-4120 (earlier numbered as DL-CAS-2798) on *superdari* to the petitioner in FIR No.48 dated 15.03.2021 registered under Sections 18 and 29 of NDPS Act at Police Station Ismailabad, District Kurukshetra.

2. The brief facts of the case are that an FIR No.48 dated 15.03.2021 under Sections 18 and 29 of the NDPS Act at Police Station Ismailabad, District Kurukshetra came to be registered against one Joga Singh, who was subsequently arrested and 150 grams of opium was recovered from him. During the course of investigation, he is stated to have suffered a disclosure statement, wherein he stated that the petitioner had provided the

contraband to him. Based on the said disclosure statement, the petitioner was arrested, a recovery of Rs.4000/- was effected from him and he was subsequently granted the concession of bail vide order dated 05.05.2021 (Annexure P-2). When the petitioner was arrested, one vehicle make Maruti Swift LDI bearing Registration No.DL-45CAS-2798 (later numbered as PB11-CY-4120) came to be recovered from the petitioner.

3. Subsequent to the grant of bail, the petitioner being the registered owner of the vehicle moved an application under Section 451 Cr.P.C. read with Section 60(3) of the NDPS Act for release of the said vehicle on *superdari*. The said application came to be dismissed vide order dated 10.02.2022 (Annexure P-3). The said order has been impugned in the present petition.

4. The learned counsel for the petitioner contends that the petitioner was the registered owner of the said car. In fact, he had purchased the same from one Ravi son of Rambir Singh resident of Delhi. The said car bore chassis No.MA3FHEB1S0044250 and Engine No.D13A0387328. On obtaining an NoC in favour of R.T.A, Patiala, the same was re-registered as PB11-CY-4120. The new R.C. in the name of the petitioner was issued on 17.09.2021. The copy of the original R.C. in favour of Ravi is annexed as Annexure P-5 to the petition, the subsequent R.C. in the name of the petitioner is annexed as Annexure P-6 to the petition and the copy of the affidavit furnished by the petitioner is annexed as Annexure P-7 to the petition. He contends that the Special Court has rejected the application of the petitioner on untenable grounds. In fact, it has been clearly established from

the record that the vehicle bearing No.DL-4CAS-2798 was the same one, which was subsequently re-numbered as PB11-CY-4120.

She contends that a Division Bench of this Court in the case of *Gurbinder Singh @ Shinder Versus State of Punjab, 2016(4) R.C.R. (Criminal) 492* after examining the provisions contained in Sections 60 and 63 of the NDPS Act and Sections 451, 452 and 457 of the Cr.P.C. has held that there was no specific provision debarring the release of the vehicle seized under the NDPS Act. It has been observed that neither the State nor the owner of the vehicle was to be benefited in any manner if the vehicle remained in the premises of the Police Station occupying space and causing inconvenience to the Department. Even otherwise, the condition of the vehicle was also likely to deteriorate being subjected to the vagaries of the weather.

She has referred to the judgment of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai vs. State of Gujarat, 2003(1) RCR (Criminal) 380* to contend that when a vehicle was lying parked, unattended, the valuable parts of the vehicle were casually taken away or stolen and its condition would substantially deteriorate. Subsequently, if the Courts came to the conclusion that the vehicle was not used in the commission of the crime, the owner would be able to collect only scrap of the vehicle. In other words, nobody was to benefit from the idle parking of the vehicle unattended in the premises of the Police Station.

It is thus, her contention that the vehicle ought to be released to the petitioner on such conditions as imposed by this Court.

5. A reply dated 17.11.2022 has been filed on behalf of the respondent-State by the learned State counsel by way of an affidavit of

Gurmail Singh, HPS, Deputy Superintendent of Police, Pehowa, Kurukshetra and the same is taken on record. He contends that the petitioner is the alleged supplier of the contraband to the arrested accused Joga Singh, though no contraband has been recovered from the petitioner. In fact, the vehicle in question which was lying parked in the premises of Police Station Ismailabad, Kurukshetra was initially registered in the name of Ravi and subsequently came to be registered in the name of the petitioner. The petitioner was involved in two other cases under the NDPS Act and looking at his antecedents it was certainly possible that he would commit similar offences in future and therefore, the vehicle ought not to be released to him.

6. I have heard the learned counsel for the parties at length.

7. This Court in **Gurbinder Singh @ Shinder Versus State of Punjab** (supra) held as under:-

“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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19. On a careful perusal of the above observation made by the Hon'ble Supreme Court, we find that no distinction was made between the vehicles seized under the Scheme of Cr.P.C. and the vehicles seized under the NDPS Act. In the special facts and circumstances of that case, the Hon'ble Supreme Court came to a conclusion that the High Court was not justified in releasing the vehicle. The Hon'ble Supreme Court has not laid down in the above judgement that the vehicle seized under the NDPS Act is not to be released on sapurdari. There was also no specific observation that the vehicles seized under the NDPS Act will have to be treated separately while considering the plea for interim custody thereof. Therefore, the above observation made by Hon'ble Supreme Court cannot be cited for rejecting the plea for release of the vehicle seized under the NDPS Act on sapurdari. In Tarsem Singh's case (supra), a totally different issue as to whether a Sub Divisional Judicial Magistrate who was not the Special Judge conferred with the power to try the case under the NDPS Act could pass an order releasing the vehicle on sapurdari had arisen for determination. In the aforesaid case, the Division Bench of this Court has not made any observation that the trial Judge empowered to try the case under the NDPS Act has no authority to release the vehicle for interim custody on sapurdari. Nor was any decision taken in the said case that the vehicle seized under the NDPS Act cannot at all be released on sapurdari.

23. *The revision petition be posted before the learned Single Judge for determination of the revision in the light of the reference answered by us.*

{emphasis supplied}

Similarly, this Court in **Rajan Versus State of Punjab, CRM-8650-2021 in CRA-S-1482-2020**, held as under:-

“ The Hon’ble Supreme Court in the case of Sunderbhai Ambalal Desai Versus State of Gujarat 2003(1) RCR (Criminal) 380, has laid down certain guidelines for the release of impounded vehicles which are reproduced as under:-

- “1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;*
- 2. Court or the police would not be required to keep the article in safe custody;*
- 3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*
- 4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”*

Since the vehicle in question is lying unattended and is parked in Police Station Special Task Force, Phase IV Mohali, its condition will deteriorate day-by-day and it will be reduced to junk.

Accordingly, the present application is allowed and the vehicle in question i.e. Swift Dzire bearing registration

No.PB-13-BB-1852 is ordered to be released to the applicant-appellant on superdari, on his furnishing indemnity bonds/surety bonds of the like amount or on the terms and conditions which may be imposed by Chief Judicial Magistrate/Duty Magistrate, SAS Nagar, Mohali.

The applicant-appellant shall submit an undertaking that the said vehicle shall not be put to any illegal use in future and he will produce the vehicle in the Court, if so required.

CRM-8650-2021 stands disposed of.”

[Emphasis supplied]

This Court in **Jaskaran Singh @ Settu Versus State of Haryana** **passed in CRR-1234-2020, decided on 15.11.2022**, has allowed the prayer of the petitioner for release of the vehicle on *superdari* keeping in view the fact that the condition of the vehicle was deteriorating day-by-day and would be reduced to junk in due course.

8. In the present case, the vehicle in question is lying unattended and is parked at Police Station Ismailabad since March, 2021. Its condition would certainly deteriorate day-by-day and in turn it would be reduced to junk in case the same is not handed over to the petitioner on the imposition of suitable conditions.

It was not the case of the answering respondent-State that the vehicle in question has been used in the prior two occurrences leading to the registration of FIR No.141 dated 07.11.2012 registered under Sections 18, 61, 85 of the NDPS Act at Police Station Julka or FIR No.476 dated 30.11.2020 registered under Sections 18, 61, 85 of the NDPS Act at Police Station Ambala Cantt. Therefore, at this stage, it cannot be held that in case the vehicle was released on *superdari* an offence of a similar kind was likely to be committed by the petitioner using the said vehicle.

9. Accordingly, in view of the aforementioned discussion and the judgments (supra), the present petition is allowed and the vehicle in question i.e. Maruti Swift LDI bearing registration No.PB11-CY-4120 (earlier numbered as DL-CAS-2798) is ordered to be released to the petitioner on *superdari*, on his furnishing indemnity bonds/surety bonds of the like amount or on the terms and conditions which may be imposed by the Chief Judicial Magistrate/Duty Magistrate, concerned.

10. In addition, the petitioner shall submit an undertaking that the said vehicle shall not be sold, its physical condition changed or be put to any illegal use in future and that he will produce the vehicle in the Court, if so required.

(JASJIT SINGH BEDI)
JUDGE

21.11.2022

JITESH

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