

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

CRR-499-2021

Date of decision: 11.03.2022

PARVEEN KUMAR

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Balraj Gujjar, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana
for the respondent.

SANT PARKASH, J. (ORAL)

1. The petitioner has filed the present 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 18.03.2021 passed by learned Special Judge (NDPS Act), Kaithal in case FIR No.24 dated 25.01.2021 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") in Police Station Kalayat, District Kaithal whereby the application for release of car bearing registration No. DL-10CF-3114 on Sapurdari was dismissed.

2. As per the prosecution version, the petitioner was driving white Ford Eco Sports Car bearing registration No. DL-10CF-3114 and one Aakash was sitting as co-passenger along with him. The police party on the basis of secret information intercepted them and on search of the car, contraband in a polythene bag was recovered underneath the front passenger seat of the vehicle. The above-said FIR was registered

and the contraband as well as the afore said car were taken into possession by the police.

3. The petitioner, being registered owner of the above said car, filed application for its release on Sapurdari which was dismissed by learned Special Judge (NDPS Act) Kaithal vide order dated 18.03.2021 on the grounds that the petitioner himself was arrested while travelling in said vehicle with 2 Kg. *Choor-patti* (contraband) being recovered under the seat of his vehicle and it cannot be safely presumed that the accused/petitioner was not having knowledge about presence of contraband in his vehicle.

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 in terms of reply filed by way of affidavit of Sunil Kumar, HPS, Deputy Superintendent of Police, Kalayat.

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 the petitioner was falsely implicated in the present case. The vehicle is parked in the Police Station premises in the open since the day it was seized by the investigating agency and will become junk and go waste. The car 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. 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 car in question may be ordered to be released on sapurdari. In support of his arguments learned Counsel for the petitioner has relied upon judgment passed by Hon'ble Apex Court in case '**Sundarbhai Amba Lal Desai Vs. State of Gujrat' 2003 (1) RCR Criminal 381** and judgment passed by Division Bench of this Court in '**Gurbinder Singh @ Shinder Vs. State of Punjab 2016 (4) RCR Criminal 492.**

8. On the other hand, learned State Counsel has argued that the car in question was used by the petitioner and his co-accused Aakash for carrying narcotic drugs and being liable to confiscation, cannot be ordered to be released on sapurdari. The petitioner was in well knowledge of using the vehicle for transportation of contraband. The vehicle if released on sapurdari, may be used as conveyance for carrying narcotic substance. The said vehicle is also involved in another case registered under Sections 420, 465, 467, 468 IPC. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed.

9. In ***Raghbir 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 **Sundarbhai Amba Lal Desai Vs. State of Gujrat'**

2003 (1) RCR Criminal 381, Hon'ble Apex Court has held as under :-

“.. 15. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

11. In **CRM-M-46869-2019 (O&M) titled as Tej Singh Vs.**

State of Haryana decided on 13.02.2020 Co-ordinate Bench of 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.

12. In the present case also, if the car 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 car in question is not only likely to take long time but may also not fetch amount higher than the reserved price. Also, passing of final order for confiscation of the car in question may also take such long time that the car 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 car 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 car in question for commission of any offence including offence under the NDPS Act and that he will deposit the market price of the car in question as determinable under the Income Tax Act/Rules in case of passing of order for its confiscation under Section 60 of the NDPS Act.

13. In view of the above discussion, the present revision petition is allowed and the car in dispute bearing registration No.DL-10CF-3114 is ordered to be released on sapurdari to the petitioner being its registered owner on furnishing sapurdginama to the satisfaction of learned Special Judge (NDPS Act), Kaithal on the conditions (i) that he

will preserve the said car 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 car in question for commission of any offence including offence under the NDPS Act and (v) that he will deposit the market price of the car in question 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 Special Judge (NDPS Act), Kaithal for requisite compliance.

11.03.2022
kavneet singh

(SANT PARKASH)
JUDGE

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