

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

CRM-M-26306-2021 (O & M)

Date of decision: 14.12.2022

Inderjit Singh

.... Petitioner

V/s

State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rakesh Kumar, Advocate, for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

Mr. Tushar Sharma, Advocate,
for respondent No.2/complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 23.11.2019 passed by the Judge, Special Court, Kapurthala, (Annexure P-3) vide which the application for release of a car make Ford Fiesta bearing registration No.PB-08-AZ-3234 on superdari stands dismissed in case bearing FIR No.162 dated 06.08.2019 under Sections 21/22 of the NDPS Act, 1985 registered at Police Station Kotwali, Kapurthala.

2. The brief facts of the case are that the present FIR came to be registered on the statement of ASI Manjit Singh, who stated that on 06.08.2019, the police party was on a patrolling duty and were going towards Village Nawan Pind Patthe Dograwal, Nawan Pind Gate Wala, Kanjli Bhila, Dham Badshahpur Boot, etc. When the police party reached

near Nawan Pind Pathe, then on the curve of Village Dogranwal, one car make Ford Fiesta bearing registration No.PB-08-AZX-3234 was seen and two persons were found standing near the car on the side of road. They, after seeing the police party, got perplexed. They were carrying something wrapped in plastic bags, which they threw on the side of the road in the grass and tried to slip away. Both the occupants of the car were arrested by the police. On enquiry, the person who was the driver of the car disclosed his name as Inderjit Singh @ Inder and the other person disclosed his name as Balbir Singh @ Krishan. The petitioner-Inderjit Singh told the police that the polythene bag thrown by him, was containing heroin and in the polythene bag thrown by Balbir Singh, there was some intoxicant powder. On checking the polythene bags, the quantity of heroin from the bag thrown by the petitioner-Inderjit Singh was 100 grams and the quantity of intoxicant powder (Alprazolam) recovered from another polythene bag was 260 grams. Further investigation led to the involvement of Sukhdev Singh and Charan Singh @ Channa being sellers of the intoxicants recovered from the petitioner and his co-accused Balbir Singh. They were implicated in the present FIR vide DDR No.35 dated 07.08.2019 by adding the offence under Section 29 of the NDPS Act.

3. Subsequent to the grant of bail , the petitioner being the purchaser of the vehicle, moved an application for release of the said vehicle on *superdari*. The said application came to be dismissed by the Judge, Special Court, Kapurthala, vide order dated 23.11.2019 (Annexure P-3). The said order has been impugned in the present petition.

4. The learned counsel for the petitioner submits that the petitioner purchased the vehicle i.e. car make Ford Fiesta bearing registration No.PB-

No.8H, H.No. 34/4 Jalandhar Cantt., who had purchased the said vehicle from its registered owner Paramjeet Kaur, wife of Gurcharan Singh, resident of Village Awan Chahrami, Kang Saboo Tehsil Nakodar, District Jalandhar. The registered owner-Paramjeet Kaur did not come forward to get the custody of the aforesaid vehicle in view of the fact that she had sold the same to Gurjot Singh and the said Gurjot Singh did not come forward to claim the custody of the aforesaid vehicle for the last two years as the ownership of the same was still existing in the name of Paramjeet Kaur-respondent No.2. She (Paramjeet Kaur-respondent No.2) had executed a Special Power of Attorney dated 08.11.2019 (Annexure P-2) in favour of the petitioner to do the needful. He contends that the respondent No.2-Paramjeet Kaur has no objection if the aforementioned car is released in favour of the petitioner. He, thus, contends that the vehicle in question ought to be released to the petitioner on such conditions as imposed by this Court.

5. The learned counsel for the respondent-State has filed a reply dated 14.12.2022 by way of an affidavit of Maninder Pal Singh, PPS, Deputy Superintendent of Police, Sub Division Kapurthala. The same is taken on record. He, however, does not dispute the factual assertions made in the petition. He fairly states that this Court could allow the petition and release the vehicle in question on *superdari* to the petitioner and an appropriate direction be issued to the petitioner that he would not sell or transfer the vehicle in question to any other person and produce the same before the Court/Appropriate Authority whenever required to do so till the trial in FIR No. 162 dated 06.08.2019 (Annexure P-1) is pending.

5. The learned counsel appearing for respondent No.2-Paramjeet

Kaur (registered owner of the vehicle) submits that respondent No.2 would

have no objection if the aforesaid vehicle is released in favour of the petitioner.

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

7. This Court in **Gurbinder Singh @ Shinder Versus State of Punjab 2016 (4) RCR (Criminal) 492,** 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.

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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 lying in the police custody since 06.08.2019. 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. Even otherwise, as per the submissions made by the learned counsel for respondent No.2/Paramjeet Kaur (registered owner of the vehicle) she has no objection if the aforesaid vehicle is released on *superdari* to the petitioner.

9. Accordingly, in view of the aforementioned discussion and the judgments (*supra*), the present petition is allowed and the vehicle in question i.e. car make Ford Fiesta bearing registration No.PB-08-AZ-3234 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 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

December 14, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No