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

CRM-M-28647-2022
Date of decision : 30.09.2022

Ravi Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashish Gupta, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of order dated 07.06.2022 (Annexure P-5) passed by the Additional Sessions Judge, Kurukshetra vide which, an application filed by the petitioner for releasing the vehicle/motorcycle bearing registration No.HR-05BA-9033 on superdari, has been dismissed.

Learned counsel for the petitioner has submitted that the petitioner had been made an accused in FIR No.139 dated 09.05.2022 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the NDPS Act, 1985”) registered at Police Station City Pehowa Kurukshetra, District Kurukshetra. It is further submitted that the petitioner is the registered owner of motorcycle bearing

registration No.HR-05BA-9033 and the said motorcycle was, as per the case of the prosecution, also involved in the said incident and the same after having been seized, was taken into the police custody. It is contended that the petitioner had moved an application dated 06.06.2022 (Annexure P-3) for superdari of the said motorcycle on the ground that he is the owner of the said vehicle and he undertakes to abide by all the terms and conditions imposed by the Court. It is further contended that in reply dated 07.06.2022 (Annexure P-4), the State had admitted the fact that the motorcycle, as per the Registration Certificate, is in the name of the present petitioner but had opposed the same on the ground that said motorcycle was case property and the alleged recovery had been effected from the polythene bag kept on the tank of the said motorcycle. It is argued that vide order dated 07.06.2022 (Annexure P-5), the said application of the petitioner was rejected on the ground that the motorcycle is case property and the present petitioner himself is an accused in the case and was caught red handed while possessing the contraband in question. It is further argued that the said two reasons are not valid reasons and for the said purpose, he has relied upon the judgment of the Division Bench of this Court in **Gurbinder Singh @ Shinder Vs. State of Punjab**, reported as **2016(4) RCR (Criminal) 492**, as well as the **judgment dated 19.05.2021** passed by the Coordinate Bench of this Court in **CRM-M-2170-2021** titled as **Vishal Vs. State of Haryana**. It is also submitted that the motorcycle is still lying in police custody in open space since 09.05.2022 and is deteriorating with every passing day and no useful purpose would be

served by keeping the same in open space. It is also contended that the petitioner is ready to give an undertaking that as and when the trial Court would require the said vehicle, the petitioner would produce the same before the trial Court at his own cost and he would also furnish an undertaking that the said vehicle will not be used for the commission of any offence, much less, under the NDPS Act, 1985.

On the other hand, learned State Counsel has opposed the present petition and has submitted that the reasons given in the impugned order are valid and are in consonance with law more so Sections 60 and 63 of the NDPS Act, 1985 as per which, the motorcycle is liable to be confiscated in case the petitioner is convicted and the involvement of the motorcycle is proved in the said occurrence. It is contended that in order to get out of rigors of Sections 60 and 63 of the NDPS Act, 1985 it is for the petitioner to prima facie establish that the motorcycle was being used without his knowledge.

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

The issue “as to whether a vehicle/conveyance could be released on superdari where the vehicle is involved in a case under the NDPS Act, 1985” was considered by the Division Bench of this Court in ***Gurbinder Singh @ Shinder's case*** (Supra). The relevant portion of the said judgment is reproduced hereinbelow:-

“8. Let us first deal with the relevant provisions under the Cr.P.C. which have bearing on the issue involved. Sections 451 and 452 and 457 Cr.P.C. read as follows:-

“451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during an inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, “property” includes-

(a) Property of any kind or document which is produced before the court or which is in its custody.

(b) Any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

452. Order for disposal of property at conclusion of trial.

– (1) When an inquiry or trial in any Criminal Court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the court, engaging to restore such property to the court if the order made under

sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under subsection (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

457. Procedure by police upon seizure of property.– (1)

Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may

order the property to delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

9. On a bare perusal of the above three provisions, one can come to a conclusion that each of those provisions deal with a different situation. Section 451 Cr.P.C. deals with interim custody of the seized property which has been produced before the Court. Section 452 Cr.P.C. speaks of the disposal of the seized property after enquiry or trial in a criminal Court is concluded. Section 457 Cr.P.C. applies to a situation where the property which has been seized by the police was not produced before the Court.

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 article is prepared, that can be used in evidence instead of its production of article before the Court during trial.

11. The question that arises for determination is whether Section 451 Cr.P.C. can be applied while considering the plea for interim custody of the vehicle seized under the NDPS Act. Section 51 of the NDPS Act which has a bearing on this issue reads as follows:-

“51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and Seizures

. - The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.”

As regards the seizure of any article or thing, the provisions of Cr.P.C. shall apply if it is not inconsistent with the provisions of NDPS Act.

12. On a thorough perusal of the various provisions under the NDPS Act, we find that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under Section 451 Cr.P.C. is not inconsistent with any specific provision under NDPS Act, the same will have to be applied as mandated under Section 51 of the said Act.

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.

14. Sections 60(3) and 63 of NDPS Act also have relevance to the issue involved in this case for determination. Section 60(3) and Section 63 of the NDPS Act reads as follows:-

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) xxxxx

(2) xxxxx

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscation.- (1) In the trial of

offences under this Act, whether the accused is convicted or acquitted or discharge, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62, and, if it decides that the article is so liable, it may order, confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month, from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance [or controlled substance] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

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16. On a perusal of the above provisions under the NDPS Act, we find that the trial Court has to take a decision as to whether a vehicle is liable to confiscation only on conclusion of the trial. A vehicle seized under the NDPS Act cannot be

kept idle to the disadvantage of everyone concerned till the order of confiscation is passed on conclusion of trial.

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21. In the above facts and circumstances, 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.

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.”

A perusal of the above judgment would show that the Court had considered the provisions of Sections 451, 452, 457 of Cr.P.C. and after considering the same, had observed that Section 451 of Cr.P.C. deals with interim custody of the seized property which has been produced

before the Court. The question “as to whether the provisions of Section 451 of Cr.P.C. can be applied while considering the plea for interim custody of the vehicle seized under the NDPS Act, 1985” was also considered and it was observed that after considering the provisions of the NDPS Act, 1985, the Court had found that there were no specific provisions debarring the release of the vehicle seized under the Act and Section 451 of Cr.P.C. was not found to be inconsistent with the specific provisions under the NDPS Act, 1985. The Division Bench had specifically noticed the provisions of Sections 60(3) and 63 of the NDPS Act, 1985 and observed that the decision with respect to confiscation has to be taken only on the conclusion of the trial and the vehicle which has been seized under the NDPS Act, 1985 cannot be kept idle to the disadvantage of everyone concerned till the order of confiscation is passed on conclusion of the trial. After considering all the aspects, it was observed by the Division Bench that they have no hesitation to hold that Section 451 of Cr.P.C. is applicable to the vehicle seized under the NDPS Act, 1985 and no differential treatment to the vehicle seized under the NDPS Act, 1985 is contemplated under the provisions of NDPS Act, 1985 and any contrary view taken would be against the interest of the owner of the vehicles as well as public at large and the State.

A co-ordinate Bench of this Court in **Vishal's** case (Supra), had 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 article is prepared, that can be used in evidence instead of its production of article before the Court during trial.”

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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 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.”

In the abovesaid case, the judgment passed by the Division Bench of this Court in **Gurbinder Singh @ Shinder's case** (Supra), was followed by the Coordinate Bench and the release of the vehicle was ordered, in a case, where the same had been seized under the NDPS Act, 1985.

In the present case, it is not in dispute that the investigation is over and report under Section 173 of Cr.P.C. has been submitted. The registered owner of the motorcycle is the present petitioner. The question as to whether the motorcycle would be confiscated or not would be answered

at the time of passing of final judgment after the trial is concluded. The motorcycle is lying idly in police custody since 09.05.2022 and is stated to be lying in an open space and the condition of the vehicle is deteriorating with each passing day and the same will neither serve the purpose of the State nor the public nor the petitioner.

Keeping in view the abovesaid facts and circumstances, as well as law laid down in the abovesaid judgments, the present petition is allowed and the order dated 07.06.2022 (Annexure P-5) is set aside and the motorcycle bearing registration No.HR05BA9033 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.75,000/- with one surety in the like amount to the satisfaction of the 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 trial Court at 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, 1985 or any other offence and in case of involvement of the petitioner or the aforementioned vehicle in a case under the NDPS Act, 1985 or any other offence, it would be open to the prosecution to move an application for cancellation of the order releasing the vehicle on superdari. The petitioner would also not change the description of the vehicle.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

30.09.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**