

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

CRR-1234-2020
Date of Decision: 15.11.2022

JASKARAN SINGH @ SETHU

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 15.10.2020 passed by the Special Judge, Kaithal, whereby the Trial Court has dismissed the application for releasing the vehicle, Verna Car bearing registration No.HR-40-D-7900 to the petitioner on *superdari* in case FIR No.109 dated 20.07.2019 registered under Sections 279, 337, 483 of IPC and Section 15 of NDPS Act, 1985 at Police Station Siwan, District Kaithal.

2. The brief facts of the case are that the petitioner was accused in aforesaid FIR No.109 dated 20.07.2019. The copy of the FIR is annexed as Annexure P-1 to the petition.

3. After the registration of the FIR, the petitioner and his co-accused Jatinder were arrested along with car bearing No.HR-40-D-7900 and after the investigation, the petitioner was sent into judicial custody. The petitioner has since been released on bail by the Court.

4. After the presentation of the challan, the petitioner filed an application for release of the vehicle on *superdari* which came to be dismissed vide impugned order dated 15.10.2020 leading to the filing of the present revision petition.

5. The learned counsel for the petitioner contends that the investigation stands completed and challan has been presented before the Trial Court. It was thereafter that an application was moved for release of the vehicle on *superdari* which has been declined. He contends that the Court has placed reliance on Section 60 of the NDPS Act to dismiss the application of the petitioner. However, 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.

He 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, his contention that the vehicle ought to be released to the petitioner on such conditions as imposed by this Court.

6. On the other hand, the learned State counsel contends that since the vehicle was used in the crime, the petitioner had no right to get it released on *superdari*.

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

8. 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.

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]

9. In the present case, the vehicle in question is unattended and is parked at Police Station Sadar, Kaithal since the last more than three years. Its condition is certainly deteriorating day-by-day and in turn it would be reduced to junk in case the same is not handed over to the petitioner.

10. Accordingly, in view of the judgments (supra), the present revision petition is allowed and the vehicle in question i.e. Verna Car bearing registration No.HR-40-D-7900 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.

11. 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

15.11.2022

JITESH

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