

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

125

**CRM-M-43996-2022
Date of Decision : 22.09.2022**

Harwinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present : Mr. Ramandeep Singh Gill, Advocate
for the petitioner.

Mr. Gurpreet Singh Sandhu, D.A.G., Punjab
for respondent No.1-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of order dated 04.06.2022 (Annexure P-1) passed by learned Judge, Special Court, SAS Nagar (Mohali) in case FIR No.31 dated 17.04.2021 registered under Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"), Sections 392, 395, 384, 511, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, and Section 25 of the Arms Act, 1959 at Police Station Sadar Kurali, District Mohali whereby the application for release the car bearing registration No.PB-46-AD-8880 on Sapurdari was dismissed.

As per the prosecution version on 17.04.2021 police party headed by ASI Talwinder Singh was present at T-point, Singpura Bye Pass, Kurali in connection with checking. They received a secret information that Samuel, Jaipal Singh, Karanbir Singh @ Kala, Rohit

Kumar, Neeraj Kumar @ Chaska and Deepak Kumar @ Mann, who were proclaimed offender in separate States in a case of murder, dacoity, extortion and drug smuggling, in connivance with other unknown persons have made an organized criminal gang for extorting the money through net calling. They snatched the vehicles through gun point and used the same for smuggling heroin and synthetic drugs. On the basis of secret information the police apprehended accused Karanveer Singh @ Kanna while he along with other co-accused travelling from Chandigarh to Tarn Taran in vehicle in question bearing registration No.PB-46-AD-8880. The vehicle was taken into possession by the police. The petitioner, being registered owner of the above said car, filed application for its release on Sapurdari which was dismissed by learned Judge, Special Court, SAS Nagar (Mohali) vide impugned order dated 04.06.2022.

Learned Counsel for the petitioner has submitted that the petitioner is the registered owner of the car in question. 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. The challan has been present in the trial Court and there is no necessity of the vehicle being kept in possession by the police. 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.

On the other hand, learned State Counsel has argued that the car in question was used by the accused for smuggling arms and

drugs. The petitioner, being owner of the vehicle, has not joined the investigation to disclose the fact that as to how the vehicle reached to the hands of the gangsters. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

In ***CRR No.1765 of 2015 titled as Gurbinder Singh @ Shinder Vs. State of Punjab decided on 19.09.2016*** Hon'ble Division Bench of this Court observed 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.”

Undisputedly, the trial in the aforesaid case is still pending before the trial Court. At present, the vehicle is standing in the police station. No useful purpose will be served, if it is allowed to remain in the police station and it will also result into damage to its condition.

Accordingly, the petition is allowed. Impugned order dated 04.06.2022 passed by learned Judge, Special Court, SAS Nagar

(Mohali), is set aside and the car in question is ordered to be released on sapurdari to the petitioner on his executing indemnity bond to the satisfaction of trial Court with one surety in the like amount and the undertaking to the effect that as and when the trial Court requires the above-said car, the petitioner will produce the same in the same condition at his own cost before the concerned Court. Trial Court will also be at liberty to impose other conditions as may deem fit.

22.09.2022
Kothiyal

(ASHOK KUMAR VERMA)
JUDGE

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