

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

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**CRM-M-51914-2021
Date of decision: 08.03.2022**

HARMESH SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Gopal Singh Nahel, Advocate
for the petitioner.

Ms. A.K. Khurana, DAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 482 CrPC for setting aside the order dated 25.10.2021 (Annexure P-2) passed by learned Judge, Special Court, Sri Muktsar Sahib in case FIR No.144 dated 31.05.2021 under Sections 15(c) of the NDPS Act registered at Police Station Lambi, District Sri Muktsar Sahib, vide which the application filed by the petitioner for releasing the vehicle i.e., truck bearing registration No.PB13-BF-0385, Model 2019 on sapurdari has been dismissed.

Learned counsel for the petitioner submits that the application filed by the petitioner has been dismissed by the learned Judge, Special Court, Sri Muktsar Sahib only on the basis of conjectural conclusion that there is likelihood of the petitioner misusing the vehicle upon being released on repetition for illegal activities. He submits that such conjectural basis cannot lay foundation of a judgment. Valid reasons directing non-release of vehicle ought to have been stated by the learned Judge, Special Court, Sri Muktsar Sahib. Learned counsel

has further placed reliance upon a judgment of the Division Bench of this Court in the matter of **Gurbinder Singh @ Shinder Vs. State of Punjab, 2016 (4) RCR (Criminal) 492**, to contend that a vehicle seized under the NDPS Act can be released. Reference is made to Para 21 of the said judgment and the same is extracted as under:-

'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.'

Ms. A.K. Khurana, DAG Punjab has stated that the petitioner was involved in yet another case under the NDPS Act and hence the apprehension formed by the learned Judge, Special Court, Sri Muktsar Sahib was not baseless. She, however, could not rebut the fact that in the earlier case there is no allegation of the petitioner having used the offending vehicle in question.

I have heard learned counsel for the parties and have gone through the record.

Invariably, the order passed by the Judge, Special Court, Sri Muktsar Sahib is based upon conjectures and does not lay on a foundation of objective reasoning. Such hypothesis cannot form the basis for continued seizure of a

vehicle. An accused cannot be devoid of his property or right to enjoy and occupy the same except in accordance with law. The power of the Court has to be exercised for valid and objective reasons. There can be no yard-stick to assume that the accused shall always continue to indulge in commission of crime. Strangely, the Court has also not recorded any such satisfaction as well. The order thus suffers from non-application of objectivity and reasoning before recording a finding. Hence the instant petition is allowed the vehicle bearing registration No. PB13-BF-0385, Model 2019 is directed to be released on furnishing bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

(VINOD S. BHARDWAJ)
JUDGE

March 08, 2022
S.Sharma(syr)

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