

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

CRR-3441-2019 (O&M)
Date of Decision: 09.12.2022

PREM SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Gurmeet Singh Saini, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J.

CRM-40191-2019

The applicant-petitioner has filed the present application, seeking condonation of delay of 55 days in filing the revision petition.

For the reasons recorded in the application, the same is allowed, as prayed for and delay of 55 days in filing the present revision petition is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRR-3441-2019

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (forshort 'the Cr.P.C.') for quashing/setting aside order dated 25.07.2019 passed by the Judge, Special Court, Fazilka, in case FIR No.4 dated 21.01.2019 registered under Section

22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act"), at Police Station BahavWala, District Fazilka, whereby, the application of the petitioner seeking release of Motor Cycle bearing Registration No.RJ-13B-3421, Engine No.JA06ETJGF00872 and Chassis No.MBLJAS049JGF00136, on *sapurdari* was dismissed.

Succinctly, the abovesaid case FIR No.4 dated 21.01.2019 was registered regarding alleged recovery of *1500 intoxicant tablets* from accused therein namely, Balwinder Singh son of Sh. Gurnam Singh and Lovepreet Singh son of Sh. Harbans Singh. Balwinder Singh and Lovepreet Singh were arrested and the abovesaid motor cycle was taken into possession by the police. The petitioner namely, Prem Singh, is a real brother of accused Balwinder Singh.

Petitioner being the registered owner of the said motor cycle, filed application for release of his motorcycle on *sapurdari*, wherein a report was called from Station House Officer, Police Station BahavWala. In the report it was stated that the RC of the said motorcycle had been verified and the local police has no objection, if the said motorcycle is released to the said applicant.

However, the Judge, Special Court, Fazilka, dismissed the application for release of motorcycle on *sapurdari*, vide impugned order dated 25.07.2019.

Feeling aggrieved, the petitioner has filed the present petition for quashing/setting aside of the above said order.

Upon issuance of notice of motion on 28.01.2020, learned counsel for the State of Punjab, appeared and has opposed the petition.

I have heard learned counsel for the parties and have gone through the paper book with their able assistance.

Learned counsel for the petitioner submits that the motorcycle in question is used by the petitioner being its registered owner, for his day to day work and he was not in the knowledge of act and conduct of his brother Balwinder Singh. The petitioner is not an accused in this case and he is the registered owner of the motorcycle, which was taken into possession by the police in the above said case. Said motorcycle is now lying in open at police station and its condition is being deteriorated day by day and it will become junk and go waste. The motorcycle can be confiscated only after affording opportunity of being heard to the petitioner. There is no provision under the NDPS Act debarring the release of the vehicle on *sapurdari*. The impugned order suffers from material illegality. Therefore, the petition may be allowed, the impugned order may be set aside and the motorcycle in question may be ordered to be released on *sapurdari*, in his favour.

Learned State counsel has submitted that since the motorcycle in question was used in the crime; accordingly, the same is case property which is liable to confiscation and cannot be released on *sapurdari*. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed.

Before considering the case in hand, it is apposite to refer to some relevant provision of Cr.P.C. Section 451 of the Cr.P.C., which empowers the Court to pass order for custody and disposal of property during pendency of trial, reads as under:-

"When any property is produced before any Criminal Court during any 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."

Section 452 of the Cr.P.C., which empowers the Court to pass order for disposal of property at conclusion of trial, reads as under:-

"(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 sub-section (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."

Section 457 of the Cr.P.C., lays down the procedure to be followed by police upon seizure of property, provides as under:-

"(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 be 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."

The issue regarding release of vehicle on *sapurdari* is no more *res integra* and has been settled by an authoritative pronouncement of Hon'ble the Apex Court in ***Sunderbhai Ambalal Desai vs State of Gujarat 2003(1) R.C.R. (Criminal) 380***, wherein, the following observations were made :-

"7. In our view, the powers under Section 451 Criminal Procedure Code, 1973 should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- 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.*
- 8. The question of proper custody of the seized article is raised in numbers of matters. In **Smt. Basavva Komm Dyamangouda Patil v. State of Mysore and another [(1977)4 SCC 358]**, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under :-*

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to be a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place, it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.

xxx

xxx

xxx

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

xxx

xxx

xxx

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Criminal Procedure Code, 1973 are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court regard to such articles are implemented properly.”

Still further, a Division Bench of this Court in **Gurbinder Singh**

considering a reference as to “*whether vehicle used for transporting the narcotics etc. can be released on supardari or not*”, has decided the issue in following terms :-

“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.

xxx

xxx

xxx

"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."

xxx

xxx

xxx

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 subsection shall, as nearly as may be practicable, apply to the net proceeds of the sale."

15. A conveyance seized under the NDPS Act shall be liable to confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the NDPS Act is liable to confiscation only on conclusion of trial. The trial Court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But, at any rate, the trial Court is not supposed to pass any order of confiscation before expiry of one month from the date of seizure or without affording opportunity to the claimant.

xxx

xxx

xxx

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.

xxx

xxx

xxx

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 Sunder bhai

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."

In the present case, the petitioner is not an accused in case FIR No.4 dated 21.01.2019 and it is the case of the petitioner that he had no knowledge of the act and conduct of his brother Balwinder Singh, who is an accused in FIR No.4 dated 21.01.2019. If the motorcycle in question is retained only on the ground of its being 'case property' which is liable to confiscation and on that basis kept in the police station in open, then the same is likely to become junk after a period of time. Even passing of final order for confiscation of the motorcycle in question may also take some time and there is likelihood that the motorcycle in question may become unusable and rendered useless for being taken over by the state on such confiscation. Thus, it will be appropriate that the motorcycle in question is released on *sapurdari* to the registered owner i.e. petitioner, on additional conditions, besides usual terms and conditions.

In view of the above discussion, the present petition under Section 482 of the Cr.P.C. is allowed and the impugned order dated 25.07.2019 passed by the Judge, Special Court, Fazilka is set aside and the motorcycle in question bearing Registration no. RJ-13B-3421 is ordered to be released on *sapurdari* to its registered owner on furnishing *sapurdginama*/

sapurdari bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate/Judge, Special Court, Fazilka.

A copy of this order be sent to the Judge, Special Court, Fazilka, for requisite compliance.

Disposed of accordingly.

December 09, 2022
gurpreet

(HARSH BUNGER)
JUDGE

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