

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

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CRM-M-10383-2022 (O&M)

Date of decision: 17.07.2023

Dev Ram

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Liaqat Ali, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

AMAN CHAUDHARY, J.

1. The present petition has been filed for quashing of order dated 07.02.2022 passed by the learned Addl. Sessions Judge, Kurukshetra vide which the application for releasing the vehicle in question on superdari involved in FIR No.37 dated 18.01.2022, registered under Sections 18, 61, 85 of NDPS Act, 1985 at Police Station Sadar Thanesar, District Kurukshetra was dismissed.

2. Learned counsel contends that the petitioner is the owner of the truck, bearing registration no. HR-64-7844, which was taken by his son, who got involved in the abovementioned FIR. The said vehicle was therefore taken into possession but the application filed by the petitioner for taking the custody of it, on sapurdari had been dismissed on the ground that the co-accused were absconding and investigation was still incomplete. However, now during the pendency of the present petition, challan stands presented, whereafter even the

charges have been framed on 10.07.2023 and two of the co-accused who were arrested, have been released on bail. The vehicle in question is parked in the police station and its condition is getting deteriorated as also the petitioner is being deprived of his livelihood since he is unable to use the truck for commercial purposes. No useful purpose is being served by keeping the truck in police custody. He undertakes that he would not sell or dispose of it and shall produce as and when required by the police. Except in the present case, the truck in question is not involved in any other case under the NDPS Act. The petitioner asserted that the said vehicle was not intentionally given by him to his son for transporting the contraband, therefore, Section 60 of NDPS Act would also not be attracted. In support of his submissions, reliance is placed on judgments of this Court in **Gurbinder vs. State of Haryana**, CRR-3265-2017, dated 16.02.2018 and **Amarpreet Singh vs. State of Punjab**, CRR-1742-2021, dated 15.03.2023.

3. On the other hand, learned State counsel opposed on the ground that 4 kg 500 gm opium was recovered from the truck in question, which falls in the category of commercial quantity as per the NDPS Act. In case the vehicle is released, it may be used again for illegal activities. However, he was not able to controvert the submissions regarding the non-involvement of the vehicle in any other case under the NDPS Act, it had not been given by the petitioner for purpose of transporting of contraband and the stage of the present case before the trial Court.

4. Heard and perused the file.

5. The issue involved in the present revision petition as to whether the vehicle used for transporting the narcotics could be released on sapurdari or not, has been decided by the Division Bench of this Court in the case of **Gurbinder**

Singh @ Shinder vs. State of Punjab, CRR-1765-2015, decided on 19.09.2016, on a reference made by learned Single Judge, due to the divergence of views.

6. In the aforesaid case, a conclusion was drawn that provisions of Sections 451, 452 and 457 of CrPC related to the issue deal with different situations. Section 451 Cr.P.C. dealt with interim custody of the seized property which has been produced before the Court, while Section 452 Cr.P.C. relates to the disposal of the seized property after enquiry or trial in a criminal Court is concluded and Section 457 Cr.P.C. applied to a situation where the property which has been seized by the police was not produced before the Court.

7. Section 51 of the NDPS Act which has a bearing on this issue reads thus:-

“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.”

8. 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. Thus, the question that arose for determination was whether Section 451 CrPC can be applied while considering the plea for interim custody of a vehicle seized under the NDPS Act.

9. The Division Bench on a thorough perusal of the various provisions under the NDPS Act, observed that there was no specific provision debarring the release of the vehicle seized under the Act. Thus, once 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 Act.

10. With regard to confiscation of illicit drugs, plants, articles and

conveyances, a reference is apposite to be made to Sections 60(3) and 63 of NDPS

Act, which read thus:

“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.”

11. This Court in **Gurbinder Singh @ Shinder** (supra) while relying on the landmark judgment in **Sunderbhai Ambalal Desai vs. State of Gujarat**, (2002)

10 SCC 283, observed that even the vehicles seized in heinous crimes are released

for interim custody, there is no logic in denying interim custody of the vehicle seized under the NDPS Act, and thus held that, “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. 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.”

12. Reference was further made to the judgment in **Union of India vs. Dinesh Kumar Verma**, 2005(9) SCC 330, and it was held that, “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 judgment 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." It was held that,

"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."

13. Hon'ble The Supreme Court in **Sainaba vs. State of Kerela**, 2022

SCC OnLine SC 1784 observed and held as follows:

"7. Learned counsel seeks to rely on the judgment of this Court in *Sunderbhai Ambalal Desai v. State of Gujarat* - (2002) 10 SCC 283 opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.

8. On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court."

14. In the case of **Amarpreet** (supra), this Court while relying on **Gurbinder Singh @ Shinder** (supra) has set aside the order rejecting the application of the vehicle involved under the NDPS Act and ordered its release on sapurdari.

15. Adverting to the facts of the case at hand, the trial Court had declined the prayer of the petitioner inter alia on the ground that the investigation was still underway, however during the interregnum not only has the same been completed

by filing of the report under Section 173 CrPC but even the charges stand framed.

The petitioner admittedly is the registered owner of the truck in question. There is no evidence that he had given it to his son for the purpose of transporting the contraband. The said vehicle was and is not involved in any similar offence, except for the present one.

16. The mere apprehension of the State that the vehicle in question may again be used for illegal activities, cannot be the sole ground to not release it, on interim basis, especially when the vehicles that come to be in custody of the investigating agencies, in other crimes are also released to the registered owners, on Sapurdari. Moreover, there is no provision under the NDPS Act that prohibits such release.

17. The peculiar facts in each case in terms of the vehicle knowingly having been given for the commission of offence; its involvement in other cases; stage of trial; time likely to be consumed for it to conclude; the idle parking of the vehicle; loss being caused to the owner, in terms of its deterioration, with the passage of time; apprehension of its valuable parts getting lost/stolen; vehicle not being put to its lawful use; purpose of its purchase; the premises of the Police Department being unnecessarily used up, all constitute the relevant factors, amongst others, that are required to be taken into consideration.

18. Evaluating the facts of the case at hand, this Court finds that the case falls within the four corners of the parameters laid down in the afore-referred judgments, in view of which, the present petition deserves to be and is hereby allowed. Accordingly, the order dated 07.02.2022 passed by the Additional Sessions Judge, Kurukshetra is hereby set aside. The vehicle in question be forthwith released to the petitioner on superdari, subject to the satisfaction of the trial Court. It is however clarified that the ultimate decision for confiscation of the

said vehicle would be independently taken by the learned trial Court as per the provisions of the NDPS Act, after the conclusion of the trial.

19. It is made clear that in case, the vehicle of the petitioner is again found involved in any other crime, the same would be a ground to seek recall the order of its release.

17.07.2023
ashok

(AMAN CHAUDHARY)
JUDGE

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