

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

CRR-659-2021 (O&M)

Reserved on:- **April 25, 2023**

Date of Pronouncement:- **June 01, 2023**

Amir Hussain Wani

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. M. S. Basra, Advocate for the petitioner.
Mr. Amit Shukla, AAG Punjab.

HARKESH MANUJA, J.

1. By way of present revision petition, challenge has been laid to an order dated 23.04.2021 passed by Ld. Judge Special Court, Pathankot, whereby prayer made on behalf of petitioner for release of Truck bearing registration No. JK-03C-7383 on supurdari has been declined.

2. Briefly stating, facts of the case are that the petitioner was implicated in FIR No.116 dated 11.06.2020 under Sections 25, 54, 59 of Arms Act, Section 3, 4, 5 of Explosive Substances Act and Section 13, 157, 18, 189B, 20 of Unlawful Activities (Prevention) Act, 1967 (for short 'the Act') Police Station Sadar Pathankot. Allegations levelled against the petitioner were of procuring and transporting weapons from Amritsar to Kashmir for Lashkar-e-toiba terrorist activities in Kashmir in the Truck owned by him bearing registration No. JK-03C-7383.

3. In the present case, the investigating has been concluded and petitioner was released on default bail vide order dated 08.02.2021. Having been released on bail, the petitioner being owner of Truck in question moved an application for its release on supurdari, but said prayer was

declined by Judge Special Court, Pathankot vide order dated 23.04.2021 with the observations that in case, the vehicle was released on supurdari, petitioner/applicant would commit the offence for carrying arms so as to cause loss of security to the country.

4. Impugning the aforesaid order dated 23.04.2021, learned counsel for the petitioner submits that the vehicle is lying idle at Police Station in open for the past almost three years now and would be rendered junk and useless in case it is not released on Superdari. He also submits that vehicle in question was used for transportation of goods by the petitioner and his family so as to earn his livelihood. Learned counsel further submits that the release can be ordered against heavy bonds/security. Pointing out towards Chapter V of the Act and in particular Sections 24-26 thereof, learned counsel vehemently submits that the investigating agency has not taken any step towards the confiscation of the vehicle in question as per the procedure contemplated therein and thus, there was no use of keeping the vehicle in question in Police Station. In support thereof, learned counsel refers to two judgments viz. “**Sunderbhai Ambalal Desai Vs. State of Gujarat**” in SLP (Criminal) No.2745 of 2002 and Delhi High Court judgment in **Manjit Singh Vs. State** in CRL. M.C. 4485 of 2013 decided on 10.09.2014.

5. On the other hand, prayer made herein has been opposed by learned State counsel while submitting that allegations levelled against petitioner are of serious nature and in case, the vehicle in question is released in his favour, in all probability the same is going to be used against the interest of nation for different terrorist activities. As regards procedure prescribed under Chapter V of the Act, learned State counsel

while referring to short reply dated 30.03.2022/ 31.03.2022 admits that no steps have been initiated for the purpose of confiscation of Truck in question as per the procedure laid down under Section 24 read with Section 25 thereof.

6. I have heard learned counsel for parties and gone through the paper-book as well as the law cited at the Bar. I find force in the arguments raised by the learned counsel for the petitioner. Practically, the average life of a transport vehicle like Truck is around 15- 20 years only and with respect to the vehicle in question, 03 years have already passed, it lying idle in the police station serving no purpose; rather it is a burden on the State itself. It was in this context only that in **Sunderbhai's case** (supra), following observations were made by the Hon'ble Apex Court:-

"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."

8. Relying upon **Sunderbhai's case** (supra), a Division Bench of this Court in case "**Gurbinder Singh @ Shinder vs State of Punjab**" bearing No CRR No.1765 of 2015 while deciding reference on 19.09.2016 observed that when a vehicle involved in a heinous crimes like rape are released for interim custody, there is no logic in denying interim custody of the vehicle seized under the NDPS Act. For reference, relevant para 13 of **Gurbinder Singh's case** (supra) is reproduced hereunder:-

"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.”

9. At this point, it is also relevant to notice that the Act has specific provisions for the seizure of property involved in a case. Sections 24 & 25 of the Act being relevant for this case are reproduced hereunder:-

“24. Reference to proceeds of terrorism to include any property intended to be used for terrorism.—*In this Chapter, unless the context otherwise requires, all references to “proceeds of terrorism” shall include any property intended to be used for terrorism.*

24A. Forfeiture of proceeds of terrorism.—*(1) No person shall hold or be in possession of any proceeds of terrorism.*

- (2) *Proceeds of terrorism, whether held by a terrorist organisation or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.*
- (3) *Where proceedings have been commenced under this section, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to, or, the value of the proceeds of terrorism involved in the offence.*
25. ***Powers of investigating officer and Designated Authority and appeal against order of Designated Authority.***—(1) *If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.*
- (2) *The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.*
- (3) *The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:*

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

- (4) *In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.*
- (5) *The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—*
- (a) it is intended to be used for the purposes of terrorism; or*
 - (b) it forms the whole or part of the resources of a terrorist organisation:*

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—*For the purposes of this sub-section, “cash” means—*

- (a) coins or notes in any currency;*
 - (b) postal orders;*
 - (c) traveller’s cheques;*
 - 1[(ca) credit or debit cards or cards that serve a similar purpose;]*
 - (d) banker’s drafts; and*
 - (c) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.*
- (6) *Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.”*

It is admitted position by the State that no proceedings under Sections 24 or 25 of the Act were initiated on its behalf with respect to the vehicle in question. Though, when specific provisions are available in an Act, general provisions of Cr.P.C. like Section 451 cannot be resorted to, in view of the judgment of Hon'ble Apex Court in "**State of M.P Vs. Uday Singh**" reported as (2020) 12 SCC 733, however, in the facts and circumstances of the present case, when admittedly the proceedings under the Act regarding confiscation of vehicle in question have not been initiated, the applicability of the Section 451 of Cr.P.C. cannot be ruled out.

10. Under somewhat similar circumstances, the Jharkhand High Court vide its decision dated 28.01.2010 passed in Crl. Rev. No.742 of 2009 titled as "**Nageshwar Mahto Vs. State of Jharkhand**" & Patna High Court in case of "**Babli Devi Vs. State of Bihar**" Crl. Misc. No. 48020 of 2016, decided on 08.05.2018 have also ordered for release of vehicle involved in the FIRs relating to the provisions of the Act subject to verification of ownership, while observing about non-initiation of confiscation proceedings as relevant factor. Relevant portion from para No.11 of **Babli Devi's** case (supra) is reproduced hereunder for reference:-

"11. Accordingly, the impugned order dated 28.09.2015 passed by the learned Additional Sessions Judge, VI, Bhagalpur in Sessions Trial No. 260 of 2012 arising out of Sultanganj P. S. Case No. 45 of 2011 is set aside. The matter is remitted back to the trial court. The learned trial Judge shall be required to go through the decisions of the Supreme Court noted above and pass appropriate order in favour of the petitioner in case the petitioner is found to be the registered owner of the vehicle in question and no confiscation proceeding in respect of the vehicle is

going on. He shall be required to dispose of the matter as early as possible, preferably within one month from the date of receipt/production of a copy of this order.”

11. Argument raised by the learned State counsel that the vehicle involved can again be used by the petitioner for other terrorist activities is also meritless on two counts; firstly, proceeding under Sections 24 and 25 of the Act can always be initiated against the petitioner with regard to the vehicle in question, if any such action on the part of petitioner is found and secondly, when petitioner is already out on bail, if he or his vehicle is subsequently found to be involved in any other such case, application can also be made for the cancellation of his bail on this ground in the present case. Even the petitioner has not been found to be involved in any such activity since the date of registration of present FIR and thus, the apprehension of the State appears to be farfetched at this stage and that too without substantial material to support.

12. In view of the discussion held above, present petition is allowed and order dated 23.04.2021 passed by Ld. Judge Special Court, Pathankot, is hereby set aside and the concerned vehicle i.e. Truck bearing registration No.JK-03C-7383 be released on superdari in favour of petitioner on his furnishing adequate personal and surety to the satisfaction of the trial Court.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

June 01, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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