

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-1208-2018 (O&M)
Date of decision: 15.02.2023

NIRMAL SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Amaninder Singh Sekhon, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for setting aside the order dated 01.03.2018 passed by the Judge, Special Court, Sri Muktsar Sahib vide which an application for taking vehicle on supardari by the petitioner being owner has been dismissed.

Learned counsel contends that the petitioner is the owner of Zen LXI Car bearing registration No. PB-65G-0593 make Maruti which is an admitted fact. The said vehicle was involved in FIR No. 8 dated 18.01.2018 lodged under Section 21/61/85 of the NDPS Act registered at Police Station Sadar, Sri Muktsar Sahib, The said vehicle was taken into police possession and was lying at police station. The petitioner being the owner of the vehicle required the same for his personal use. He thus filed an application for sapurdari. He had averred and undertaken in the application that he would not sell or dispose of the vehicle in any manner and shall produce the same in the Court as and when required. Since there was no proper place to keep the vehicle safely at police station, thus, the same be released on sapurdari.

Notice having been issued in the application, the report of SHO was

called, who to raised an objection to release the vehicle, there being suspicion that the car may be used for illegal activities. The learned Special Court vide order dated 01.03.2018 dismissed the application on the ground that the conveyance which is being used for carrying narcotic drugs is liable to confiscated and thus, held it not to be released on sapurdari to the petitioner. Learned counsel submits that there was no dispute with regard to the ownership of the vehicle. The trial in the case is still pending as the next date of the case is 22.02.2023 for prosecution evidence, thus, it will take a long time to conclude and during this time, there will be irreparable loss to the petitioner, due to the likelihood of damage to the vehicle in question.

Learned State counsel has filed reply admitting therein that the petitioner, who is the father of accused Hardeep Singh, is the owner of the vehicle in question and that his son had taken the vehicle from the house on 18.01.2018 on the pretext of seeing some tractor at Faridkot, however, he had fallen in bad society and got involved in the FIR in question wherein recovery of 10 gm. of heroin was effected from Hardeep Singh and Gagandeep Singh, who were traveling in the said vehicle. There is suspicion that the car in question may be used for illegal activities by the son of the petitioner.

In rebuttal, learned counsel for the petitioner states that it is not the case of the State that the vehicle was intentionally given by the petitioner for the purpose of transportation of contraband. Therefore, Section 60 of the NDPS Act would not be attracted.

Heard.

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.

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.

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.”

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.

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.

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.”

This Court 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.”

While relying to the landmark judgment in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** 2003(1) RCR (CrL.) 380, it was further observed that, “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.”

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, “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.”

Adverting to the facts of the case in hand, it is candidly admitted in the reply to the present petition that as a matter of fact the petitioner is the owner of the vehicle in question, that his son, accused-Hardeep Singh had borrowed from him on a genuine pretext, be that as it may, he having fallen in bad society got involved in the case under the NDPS Act. The trial in the said case is under way. There is no provision under the NDPS Act debarring the release of the vehicle on interim basis. It being kept idle is to the disadvantage of all parties concerned-its but obvious deterioration and inconvenience to the Police Department by use up of space. Ground taken to not release the vehicle only on a premise that it might be used for illegal activities, cannot apparently be considered to be a valid one, moreso when vehicles allegedly involved in other crimes are released.

Considering the facts and circumstances of the present case in light of the judgments referred to hereinabove, the present petition is allowed. The order dated 01.03.2018 passed by the Judge, Special Court, Sri Muktsar Sahib is hereby set aside. The vehicle in question be forthwith released to the petitioner on superdari, subject to the satisfaction of Judge, Special Court, Sri Muktsar Sahib. It is however clarified that the ultimate decision for confiscation of the vehicle would be independently taken by the learned trial Court as per the provisions of the NDPS Act, after conclusion of the trial.

(AMAN CHAUDHARY)
JUDGE

February 15, 2023

Mehak/S.Sharma(syr)

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