

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34883-2022 (O & M)

Date of decision: 27.02.2023

Sukhwinder Singh

..... Petitioner

V/s

State of Punjab and ors.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ashok Paul Batra, Advocate,
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the order dated 23.10.2020 (Annexure P-1) passed by the Divisional Forest Officer, Rupnagar whereby the application for releasing the vehicle on Superdari had been dismissed as also the order in appeal dated 04.02.2021 (Annexure P-2) passed by the Conservator of Forests-cum-Appellate Authority, Shiwalik Circle, Punjab, SAS Nagar upholding the order of the Divisional Forest Officer, Rupnagar.

2. The brief facts of the case are that FIR No.0045 dated 06.04.2020 under Section 63 of the Indian Forest Act, 1927, Section 3 of the Prevention of Damage to Public Property Act, 1984 and Sections 186, 353, 188, 447 and 427 IPC at Police Station Chamkaur Sahib, District Rupnagar, came to be registered against Amarjeet Singh, Sukhwinder Singh (petitioner), Chanchal Kumar, Jaspreet Singh and Anokh Singh for the allegations that some persons including the aforementioned persons had

ploughed the trees grown on the Government forest land. A copy of the aforementioned FIR is attached as Annexure P-3 to the petition.

3. Pursuant to the registration of the FIR, the respondent No.2-Divisional Forest Officer, Rupnagar had confiscated the tractor bearing registration No.PB-20-6172 make Mohindra. The petitioner moved an application for releasing of the said vehicle on Superdari. However, the Court of Civil Judge (Jr. Division), Rupnagar vide order dated 22.06.2020 (Annexure P-4) dismissed the application with the direction to present it before the competent/appropriate Forum.

4. Against the aforementioned order, the aggrieved persons approached the Divisional Forest Officer, Rupnagar-respondent No.2. Vide order dated 23.10.2020 (Annexure P-1) passed by respondent No.2, they were directed to file an appeal in the Court of the Conservator of Forests, Shiwalik Circle, Department of Forests and Wildlife Preservation, Punjab.

5. Thereafter, the aggrieved persons approached the Conservator of Forests-cum-Appellate Authority, Shiwalik Circle, Punjab, SAS Nagar. The said authority vide order dated 04.02.2021 (Annexure P-2) upheld the order of the Divisional Forest Officer, Rupnagar dated 23.10.2020 and declined to release the vehicle in question on Superdari.

The aforementioned orders are under challenge before this Court.

6. The learned counsel for the petitioner contends that in terms of judgment in ***Sunder Bhai Ambala Desai Vs. State of Gujara 2003(1) RCR (Criminal) 380 and Gurbinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492***, the vehicle ought to have been released on Superdari by way of interim custody since neither the State nor the owner of

the premises of the police Station. On the other hand, the vehicle was likely to remain unattended, the valuable parts of the vehicle were liable to be stolen and the condition of the vehicle was likely to deteriorate. In addition, since a tractor is a valuable piece of machinery for an agriculturist, the petitioner would suffer huge loss in growing and cultivating crops without the said tractor. He, thus, contends that the impugned orders be quashed and the vehicle be handed over/released to him on imposition of appropriate conditions.

7. The learned counsel for the State, on the other hand, has filed a reply dated 15.02.2023 by way of an affidavit of Harjinder Singh, IFS, Divisional Forest Officer, Rupnagar-respondent No.2. She, while narrating the sequence of events states that the impugned orders of confiscation have rightly been passed. Therefore, this Court ought to dismiss the present petition.

8. I have heard the learned counsel for the parties.

9. Before proceeding further, it would be apposite to refer to the relevant provisions of the Indian Forest Act, 1927. Sections 52, 53 of the aforesaid Act are reproduced hereinbelow:-

“Section 52 Seizure of property liable to confiscation.

(1) When there is reason to believe that a forest offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, maybe seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Section 53 Power to release property seized under section 52.

—Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made”.

10. This Court in the case of ***Gurinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492*** has held 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.

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”.

11 The Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai Versus State of Gujarat 2003(1) RCR (Criminal) 380***, has laid down certain guidelines for the release of impounded vehicles which are reproduced as under:-

- “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.”*

12. Since the vehicle is lying unattended and is parked at the concerned Police Station/Forest Authorities, its condition would deteriorate day by day thereby diminishing its value and it would be reduced to junk.

13. Accordingly, the present petition is allowed and the vehicle in question i.e. Tractor bearing registration No.PB-20-6172 make Mohindra is ordered to be released to the petitioner on Superdari, on his furnishing indemnity bonds/surety bonds of the like amount or on the terms and conditions which may be imposed by Chief Judicial Magistrate/Duty Magistrate, concerned.

14. The petitioner shall also submit an undertaking that the said vehicle shall not be put to any illegal use in future and he will produce the

vehicle as and when required. He shall not sell, transfer or alter the physical condition of the vehicle in any manner.

15. The present petition is disposed of accordingly.

(JASJIT SINGH BEDI)
JUDGE

February 27, 2023
sukhpreet

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