

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

**CRR No.2113 of 2023 (O&M)**

**Date of Decision: 22.09.2023**

Damini Sharma

..... Petitioner

*Versus*

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present:- Ms. Navneet Kaur, Advocate for the petitioner.

Mr. Ashok S. Chaudhry, Addl. A.G., Haryana for the respondent.

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**MAHABIR SINGH SINDHU, J.**

**CRM-39830-2023**

Application for condonation of 334 days' delay in filing the revision petition.

Notice of the application to the non-applicant/respondent.

On asking of the Court, Mr. Ashok S. Chaudhry, Addl. A.G., Haryana accepts notice on behalf of the non-applicant/respondent and raises no objection.

In view of the above and for the reasons mentioned in the application, the same is allowed subject to all just exceptions. Delay of 334 days in filing the revision petition is condoned.

**MAIN CASE**

Present petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) for setting aside the impugned

order dated 21.07.2022, passed by learned Additional Sessions Judge, Kurukshetra (*for short 'trial Court'*), whereby an application of the petitioner for releasing her motorcycle-Splendor Plus, registration No.HR-01-AV-4513, on *Sapurdari* was declined.

(2) It transpires that husband of petitioner, namely, Salman, was driving above motorcycle and certain contraband had been recovered from the accused-husband. In this regard, FIR No.277 dated 23.04.2022, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) came to be registered at Police Station Sadar, Thanesar, District Kurukshatra and the motorcycle was also impounded by the Police. Both sides acknowledged that trial is pending for 11.12.2023 for awaiting the FSL report and charges are yet to be considered by the Court concerned.

(3) Petitioner is claiming to be the registered owner of motorcycle. She filed an application under Section 451 of the Cr.P.C. for releasing the vehicle on *Sapurdari*, but was rejected by learned trial Court. Hence, present revision.

(4) Learned Counsel for the petitioner contends that she is the registered owner of motorcycle; charges in the matter are yet to be considered; proceedings before learned trial Court will take sufficient long time, hence, no purpose would be served by keeping the motorcycle in Police Station; rather shall deteriorate its value.

(5) On the other hand, learned State Counsel after obtaining instructions is not able to dispute the factum of ownership of motorcycle as well as status of trial; but opposed the prayer on the premise that in case vehicle is released, it may be misused again for the similar purpose.

(6) Heard both sides and perused the paper-book.

(7) Concededly, petitioner is the registered owner of motorcycle and her application for releasing the same on *Sapurdari* was dismissed by learned trial Court, *inter alia*, observing as under:-

*“Accordingly, in the case in hand, it can be said that the registered owner, who is wife of the accused can not be said to have no knowledge of possessing of contraband by her husband. In case the vehicle is released, there are chances that it may be again used for transportation purposes of illicit drug. As such, the application in hand is hereby **dismissed**. The applicant stand disposed of accordingly.”*

(8) Perusal of the above extract reveals that learned trial Court declined the prayer precisely on two counts:-

- (i) petitioner being wife of the accused cannot be said that she was not having knowledge about the possession of contraband;
- (ii) in case the motorcycle is released, there are chances that it may be misused again for similar purpose.

(9) No doubt, petitioner is the wife of accused and some contraband is alleged to have been recovered from him; but it does not mean that she was having the knowledge about motorcycle being used for transportation of illicit drug; nor there can be an absolute proposition of law that a wife would be aware about all the activities of her husband; or that she should be held vicariously liable in such like matter(s) without there being any material to that effect.

(10) Above all, the charges against the husband of petitioner are yet to be considered; thus, at this stage, it would be preposterous to make any

observation regarding the complicity of petitioner or attributing any element of knowledge about the alleged act of her husband. It is nowhere the case of prosecution that petitioner was present along with her husband when alleged contraband was recovered. Still further, the apprehension of learned trial Court that motorcycle may be misused again for the similar purpose is without any basis and even learned State Counsel on repeated asking, was not able to substantiate this aspect of the matter.

(11) Moreover, the legal position on the point in issue is well settled by the Hon'ble Supreme Court in '***Sunderbhai Ambalal Desai Versus State of Gujarat, (2002) 10 SCC 283*** and for reference, relevant part of the same is extracted hereunder:-

*“7. In our view, the powers under Section 451 CrPC 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 the 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.*

**XXXXXXX**

*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.”*

(12) Still further, a Division Bench of this Court in ‘**Gurbinder Singh @ Shinder Versus State of Punjab**’ (CRR-1765-2015), decided on 19.09.2016, reported as **2016 (4) RCR (Criminal) 492**, while relying upon the **Sunderbhai Ambalal Desai’s** case (*supra*) observed as under:-

*“19. 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 judgement 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. In Tarsem Singh's case (*supra*), a totally different issue as to whether a Sub Divisional Judicial Magistrate who was not the Special Judge conferred with the power to try the case under the NDPS Act could pass an order releasing the vehicle on sapurdari had arisen for determination. In the aforesaid case, the Division Bench of this Court has not made any observation that the trial Judge empowered to try the case under the NDPS Act has no authority to release the vehicle for interim custody on sapurdari. Nor was any decision taken in the said case that the vehicle seized under the NDPS Act cannot at all be released on sapurdari.*

20. ....

*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) In view of the above discussions, this Court is of the considered opinion that reasons assigned by learned trial Court while passing the impugned

order are not legally sustainable. Hence, there is no option except to set aside the order under challenge.

(14) Consequently, the revision is allowed. Impugned order dated 21.07.2022 is set aside. Matter is remitted back to learned trial Court for passing fresh order, in accordance with law, expeditiously.

(15) It is made clear that the observations made above may not be construed as an expression of opinion on the merits of controversy in any manner.

(16) Pending application(s), if any, shall also stand disposed off.

September 22<sup>nd</sup>, 2023  
Gagan

( MAHABIR SINGH SINDHU )  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |