

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

Date of Decision:- **June 02 , 2023**

CRR-2673-2022 (O&M)

Maya @ Billo

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Ramandeep Kaur, Advocate for
Mr. Gurpal Singh Sandhu, Advocate for the petitioner.

Mr. Kunal Vinayak, AAG Punjab.

HARKESH MANUJA, J.

1. By way of present revision petition, challenge has been laid to an order dated 30.07.2022 passed by Ld. Additional Session Judge, Pathankot, whereby prayer on behalf of petitioner for release of gold and silver articles/ornaments i.e. gold chain, gold kante, Taviti, silver panjeban, Churian and Rs.59,500/-, on supurdari has been dismissed.

2. Briefly stating, facts of the case are that present FIR No.77 dated 13.04.2022 was registered at Police Station City Malout, District Sri Muktsar Sahib, under Section 21 7 27 of the NDPS Act, 1985, with the allegations that on search of Co- accused Harjinder Singh and Gobind Singh alias Raman, one grams of heroin each and one syringe from both were recovered. On the disclosure statement of accused Harjinder Singh, petitioner / Maya Devi and Rajat Kumar alias Gurdev Singh were also nominated in this case followed by their arrest and from the possession of petitioner Maya Devi gold as well as silver articles/ornaments i.e. gold chain, gold chain, gold kante, Taviti, silver panjeban, Churian besides cash of Rs.59,500/- were recovered.

SANJAY GUPTA Subsequently, Petitioner was granted the concession of regular bail by
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the Id. Trial Court, followed by which, she filed an application for release of aforementioned articles before the Id. Additional Session Judge which was dismissed vide order dated 30.07.2022.

3. By way of present revision petition, challenge has been laid to the order dated 30.07.2022.

4. Impugning the aforesaid order dated 30.07.2022, learned counsel for the petitioner submits that the ornaments and the money are lying idle at the Police Station which would be rendered junk and useless with the passage of time as there are no proper arrangements to keep those articles in the police station. She further submits that the present petitioner is the owner of gold and silver articles which are in fact part of her istridhan and the money was earned from her orchard business and therefore, Id. Court erred in law by not releasing the above said articles on superdari during the pendency of the trial, as per the provisions of Cr.P.C. In support of her contentions, she places reliance upon:

- i. **“Kapil Jha v. State of Madhya Pradesh”**, (Madhya Pradesh)(Gwalior) : Law Finder Doc Id # 1937648 in case bearing no MCRC No. 4636 of 2022 decided on 27.1.2022.
- ii. **“Satpal v. State of Haryana”**, (Punjab And Haryana) : Law Finder Doc Id # 1766262 in case bearing no CRM-M-22871 of 2020 decided on 8.10.2020.
- iii. **“Ravi Kumar v. State of Haryana”**, (Punjab And Haryana) : Law Finder Doc Id # 2042889 in case bearing no CRM-M-28647 of 2022 decided on 30.09.2022.
- iv. **“Tilak Ram v. State of H.P.”**, (Himachal Pradesh) : Law Finder Doc Id # 2057903 in case bearing no Criminal Revision No. 143 of 2022 decided on 14.9.2022.

5. On the other hand, prayer made herein has been opposed by learned State counsel while submitting that the allegations levelled against petitioner are of serious nature and the recovered articles being part of case property cannot be released on superdari.

6. I have heard learned counsel for the 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 as no purpose is going to be served by keeping the recovered articles for a long duration in the police custody; rather it becomes a burden on the state itself. For the purpose of disposal of property there is Chapter XXXIV in Cr.P.C. wherein specific provision under Section 451 Cr.P.C. has been carved out for proper custody thereof pending trial, which is defined as under:-

“Section 451. Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—

- (a) property of any kind or document which is produced before the Court or which is in its custody;*
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”*

7. Stressing that powers under Section 451 Cr.P.C. shall be exercised properly and promptly by the concerned magistrate so that

articles are not kept for a long time at the police station, in landmark judgement “**Sunderbhai Ambalal Desai Vs. State of Gujarat**” reported as 2002 Supp(3) SCR 39, following observations were made by the Hon’ble Apex Court:-

“In our view, the powers under Section 451 Cr.P.C. 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 panchanama 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.”*

8. In **Sunderbhai’s case** (supra), with respect to “Valuable Articles and Currency Notes”, following directions were also issued by Hon’ble Apex Court:-

“Valuable Articles and Currency Notes

With regard to valuable articles, such as golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

For this purposes, if material on record indicates that such articles belong to the complainant at whose

house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

(1) preparing detailed proper panchanama of such articles:

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition.

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to kept in police custody, it would be open to the SIO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification, However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed.”

9. Relying upon **Sunderbhai’s case** (supra), a Division Bench of this Court in the case of “**Gurbinder Singh @ Shinder vs**

State of Punjab” reported as 2016 (4) RCR (Criminal) 492 bearing Case No CRR No.1765 of 2015 decided on 19.09.2016, while deciding reference observed that the provision under Section 451 Cr.P.C. is not inconsistent with any specific provision under NDPS Act, and the same will have to be applied as mandated under Section 51 of the said Act. Relevant paras 12 & 13 of the same are reproduced here under:-

“12. On a thorough perusal of the various provisions under the NDPS Act, we find that there is no specific provision debarring the release of the vehicle seized under the Act. When 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 said Act.

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.”

Similar position of law has also been reiterated in judgments relied upon by the learned Counsel for the petitioner.

10. At this point, it is also relevant to notice that NDPS Act has specific provisions (CHAPTER VA [FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY]) for the forfeiture of illegally acquired property involved in a case and it is admitted position by the state that no proceeding under section 68(H) have been initiated so far, on behalf of the state with respect to the seized articles. Report by the concerned police station that said articles are drug money, which has been relied upon by the learned Additional Session Judge while dismissing the application, as well as the stand taken by the state in its reply, does not hold much substance at this stage. Procedure as specified under section 68(H) of NDPS Act is required to be followed in such cases and articles may be forfeited only after providing opportunity - “to explain and provide information/evidence indicating the source of income” - to the person who claims to be the owner of such articles. This Court in **“Harbans alias Kaka vs. State of Haryana”** in case bearing No CRM-M-23119-2021 decided on 17.05.2023 held as under:

“(9) Moreover, the seizure of the amount recovered from the petitioner has been admittedly made under Section 68(F) of the NDPS Act, though no proceedings regarding its forfeiture as postulated under Section 68(H) thereof have been initiated even after the expiry of almost three years. In this manner, the petitioner has been deprived of his right to explain and provide information/evidence indicating the source of income or the vehicle by which the money recovered was acquired by him.”

11. In view of the discussion held above, present petition is allowed and resultantly the order dated 30.07.2022 passed by Ld. Additional Session Judge, Sri Muktsar Sahib, is set aside with a further direction to release the aforesaid articles lying with the investigating agency in favour of the petitioner, subject to her furnishing of security to the satisfaction of the trial Court.

12. In addition, the aforesaid recovered cash amount shall be released in favour of the petitioner against coloured photocopies of the currency notes to be retained by the prosecution under due acknowledgment by the petitioner as regards their numbers, along with an undertaking that she will not dispute the identity thereof during trial.

13. Similarly, the aforesaid recovered gold/silver/other articles shall be released in favour of the petitioner after preparing detailed proper panchanama of such articles and taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; along with an undertaking that the petitioner will not dispute the identity of these articles during trial.

14. It is further clarified that the trial Court, while releasing the above mentioned cash/ articles, in addition to determining the appropriate security amount, would also be at liberty to specify additional conditions to its satisfaction.

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

June 02, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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