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

CRR-2652-2022

Date of Decision: 29.05.2023

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..... PETITIONER

VS

State of Punjab

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present : Mr. Hardik Ahluwalia, Advocate for
Mr. Amandeep Singh Manaise, Advocate for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

GURBIR SINGH, J. (ORAL)

The challenge in this revision petition is to set aside the order dated 02.08.2022 passed by learned Special Court, Pathankot, whereby application for release of black colored Creta car No. JK-02CM-6600 on Superdari in case bearing FIR No.88 dated 28.06.2021 under Sections 21, 29 of NDPS Act registered at Police Station Pathankot District Pathankot, was dismissed.

Status report by way of an affidavit of Sumeer Singh, PPS, Deputy Superintendent of Police, Sub Division Rural, District Pathankot has been filed by learned State counsel and the same is taken on record. A copy thereof has been supplied to the counsel opposite.

The case was registered against Amit Sudan on the basis of secret information that he was involved in the business of selling cocaine. He was traveling in his car bearing No.JK-02-CM-6600 Make Creta Black Colour and was going towards Gurdaspur side. He was apprehended and on checking the car, one bag was recovered from under the front seat (next to the driver) of the car. On opening of the bag, 05 packets were recovered, the details of which are as under:-

- Packet 1-1kg 170 grams

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- Packet 2- 1 kg 145 grams
 - Packet 3- 1 kg 170 grams
 - Packet 4- 1 kg 135 grams
 - Packet 5- 1 kg 145 grams
- Total= 5 kg 765 grams

The recovered contraband and the said car was taken into police possession.

Learned counsel for the petitioner submits that vehicle in question is lying in the police station. It is deteriorating day by day and no confiscation proceedings has yet been started. The vehicle is required to be released during the pendency of trial as per provision of Section 451 Cr.P.C.

Learned State counsel has opposed the prayer of the petitioner. It is submitted that the petitioner was found carrying huge quantity of contraband in the vehicle in question. The trial of the case is going on. If vehicle is given on Superdari then it would be further used for smuggling of the contraband.

The confiscation proceedings has yet not been started. In case of ***Sunderbhai Ambalal Desai 2003(1) R.C.R (Criminal)380 Vs. State of Gujarat***, it has been held by the Hon'ble Supreme Court of India that powers of Sections 451 and 457 Cr.P.C should be exercised expeditiously and judicially for the proper custody, pending conclusion of the inquiry/trial.

In the order dated 19.09.2016 passed in CRR No.1765-2015 in Gurbinder Singh @ Shinder Vs. State of Punjab, the Division Bench of this Court 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,

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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. ”

It is not disputed that the vehicle is lying in the premises the police station. The reason given by the learned trial Court is that if car released on Superdari, it can be used again for carrying the contraband and the same is required at the time of examination of the witnesses. These are not the grounds, whereby handing over of custody of the vehicle during trial, is to be refused.

Accordingly, this petition is allowed. Order dated 02.08.2022 passed by learned Special Court, Pathankot is hereby set aside. Learned Special Court, Pathankot is directed to release the vehicle in question on Superdari to the registered owner Amit Sudan or to him through his duly constituted attorney i.e. his wife on furnishing Superdari bonds in the sum Rs.5.00 lacs with one surety in the like amount with an undertaking to the effect that vehicle shall not be used for illegal activity and shall be produced in the same condition as and when required by the trial Court during the course of trial.

In case of default, the prosecution is free to move an application for cancellation of the order releasing the vehicle on Superdari.

(GURBIR SINGH)
JUDGE

29.05.2023

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No