

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-57380-2022

Date of Decision:-16.02.2023

Aman.

.....Petitioner.

Versus

State of Haryana.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. V.B. Godara, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 482 Cr.PC is for quashing of the order dated 23.05.2022 (Annexure P-3) passed by Additional Sessions Judge, Fatehabad in case FIR No.389 dated 17.12.2020 under Section 15, 27A of NDPS Act, registered at Police Station Bhuna, District Fatehabad, whereby the application of the petitioner for release of vehicle i.e. Bolero Jeep Bearing registration number HR-26BQ-8689 on superdari has been dismissed.

The brief facts of the case are that on 17.12.2020 the aforementioned vehicle of the petitioner was impounded by the police in case FIR No. 389 dated 17.12.2020 under Section 15, 27A of NDPS Act, registered at Police Station Bhuna, District Fatehabad. The vehicle is in possession of the police at Police Station Bhuna. A copy of the FIR is

attached as Annexure P-1.

The petitioner moved an application for release of vehicle on Superdari and the same came to be dismissed vide order dated 23.5.2022 (Annexure P-3). It is the said order which is under challenge in this petition.

The Counsel for the petitioner contends that the petitioner is the registered owner of the vehicle. He is not an accused in the instant FIR. In fact the accused had taken the vehicle for their personal use. The petitioner was not aware about the intention of the accused in borrowing the vehicle. Since the condition of the vehicle was deteriorating day by day, he was entitled to the release of the same on superdari.

The Counsel for the State on the other hand has filed a reply dated 28.01.2023 of Mr. Jugal Kishore, DSP, Tohana, District Fatehabad (Haryana). He contends that the vehicle was used in the commission of the offence in question. Under Section 60(3) of the NDPS Act, the vehicle was liable to be confiscated. The petitioner had not been able to establish that the vehicle had been used for committing the offence under the NDPS Act without his knowledge or that he had taken all reasonable precautions against the misuse. Even otherwise, if it was released on superdari it was liable to be used once against for the commission of offence. He thus contends that there was no merit in the present petition and the same ought to be dismissed.

I have heard learned Counsel for the parties at length.

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.*

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.”*

Since the vehicle is lying unattended and is parked as P.S. Bhuna its condition would deteriorate day by day and it would be reduced to junk.

Accordingly, the present petition is allowed and the vehicle in

question i.e. Bolero Jeep Bearing registration number HR-26BQ-8689 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, Fatehabad.

The petitioner shall submit an undertaking that the said vehicle shall not be put to any illegal use in future and he will produce the vehicle in the Court, if so required.

(JASJIT SINGH BEDI)
JUDGE

Feburary 16, 2022
Vinay

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