



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

CRM-M-13194-2024

Date of Decision:-24.05.2024

Vajid Hasan.

.....Petitioner.

Vs.

State of Haryana.

.....Respondents.

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

Present:- Mr. Sanpreet Sandhu, Advocate for the Petitioner.

Ms. Aditi Girdhar, 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 06.10.2023 (Annexure P-1) passed by Additional Sessions Judge, Yamuna Nagar at Jagadhari in CRM-536-2023 titled as State of Haryana Vs. Mohin Khan whereby the application for releasing on superdari the Motor cycle make Hero Splendor Plus bearing registration number HR02AX 0360 has been dismissed.

2. The brief facts of the case are that the FIR No.636 dated 12.08.2023 was registered against the son of the petitioner under Sections 21B-61-85 of the NDPS Act. At that time he was found allegedly riding on the motor cycle in question. The recovery of 15.20 grams of Heroin came to be effected from him.

3. During the course of the Trial, the petitioner being the registered owner of the motor cycle moved an application seeking release of the same on superdari as the investigation stood completed and the challan stood presented. The said application however, came to be dismissed vide order dated 06.10.2023 passed by Additional Sessions Judge, Yamuna Nagar.

4.

It is the aforesaid order which is impugned in the present



petition.

5. The Counsel for the petitioner contends that the motor cycle in question is lying parked at Police Station City Yamuna Nagar since the date of the FIR i.e. 12.08.2023. Even the charges have not been framed yet and as many as 18 PWs are yet to be examined. In case the vehicle was not released on superdari, its condition will deteriorate on day to day basis. The petitioner undertakes that he will neither change the colour of the motor cycle nor sell it during the pendency of the Trial and would produced the same as and when required. He is ready to furnish a heavy surety/guarantee for the release of the vehicle on superdari. Reliance is placed on the judgments in **Gurbhinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492** and **Mubarik Khan Vs. State of Haryana CRR-2688-2023 Deided on 18.04.2024.**

6. The Counsel for the State on the other hand has filed a reply by way of an affidavit of Mr. Rajesh Kumar, HPS, Deputy Superintendent of Police, Yamuna Nagar-II in the court today, which is taken on record. While referring to the said reply he contends that in terms of Section 60 of the NDPS Act the vehicle in question could not be released to the petitioner.

7. I have heard learned Counsel for the parties at length.

8. Before proceeding further it would be apposite to examine the judgments in **Gurbhinder Singh @ Shinder's case supra** and the same reads as under:-

“ 10. In the landmark judgement in *Sunderbhai Ambalal Desai's case (supra)*, the Hon'ble Supreme Court took serious note of the fact that a large number of seized vehicles and articles were kept in the police station totally unattended. Finding that there was no use to keep such seized vehicles at the police station for a long period, the Hon'ble Supreme Court directed the Judicial Magistrates to exercise the powers under Section 451 Cr.P.C. expeditiously and judiciously and entrust interim custody of articles and vehicles seized to the owner of the property or to the person who is entitled to be in possession of the property. The Hon'ble Supreme Court also made an observation that if the powers under Section 451 Cr.P.C. are judiciously exercised, the owner of the property would not suffer because of its remaining unused or by its misappropriation. Further, the Court or the police would not be required to keep the articles in safe custody. If proper panchnama before handing over the possession of the article is prepared, that can be used in evidence instead of its production of article before the Court



during trial.

11. *The question that arises for determination is whether Section 451 Cr.P.C. can be applied while considering the plea for interim custody of*

the vehicle seized under the NDPS Act. Section 51 of the NDPS Act which has a bearing on this issue reads as follows:-

“51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and Seizures

.- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.”

As regards the seizure of any article or thing, the provisions of Cr.P.C. shall apply if it is not inconsistent with the provisions of NDPS Act.

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.*

14. *Sections 60(3) and 63 of NDPS Act also have relevance to the issue involved in this case for determination. Section 60(3) and Section 63 of the NDPS Act reads as follows:-*

“60. Liability of illicit drugs, substances, plants, articles and

**conveyances to confiscation.-**

(1) xxxxx

(2) xxxxx

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscation.- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharge, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62, and, if it decides that the article is so liable, it may order, confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month, from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance [or controlled substance] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

15. A conveyance seized under the NDPS Act shall be liable to confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the NDPS Act is liable to confiscation only on conclusion of trial. The trial Court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But, at any rate, the trial Court is



not supposed to pass any order of confiscation before expiry of one month from the date of seizure or without affording opportunity to the claimant.

16. On a perusal of the above provisions under the NDPS Act, we find that the trial Court has to take a decision as to whether a vehicle is liable to confiscation only on conclusion of the trial. A vehicle seized under the NDPS Act cannot be kept idle to the disadvantage of everyone concerned till the order of confiscation is passed on conclusion of trial.

17. Learned Single Judge of this Court in **CRR No.3231 of 2014 Kirandeep vs. State of Punjab decided on 12.12.2014**, having relied upon the decision of the Hon'ble Supreme Court in **Union of India vs. Dinesh Kumar Verma, 2005(9) SCC 330** and judgement of the Division Bench of this Court in **Tarsem Singh vs. State of Punjab, 2005(4) RCR (Criminal) 300**, held that release of the vehicle seized under the NDPS Act during the trial of the case is in violation of the provisions of the NDPS Act, 1985 and that therefore, the question of interfering with the decision taken by learned Special Judge not to release the vehicle for interim custody does not arise for consideration.

18. A brief judgement in **Union of India vs. Dinesh Kumar Verma, 2005(9) SCC 330**, reads as follows:-

“ Heard the counsel for the parties.

2. Leave granted.

3. By the impugned order, the High Court has directed the release of the vehicle during trial of the accused for violation of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Narcotic Drugs and Psychotropic Substances Act). In our view, in the facts and circumstances of the present case, the High Court was not justified in releasing the vehicle.

4. Accordingly, the appeal is allowed, the impugned order rendered by the High Court is set aside and the prayer for release of vehicle made on behalf of the respondent is rejected. The respondent is directed to surrender the vehicle within a period of one month from today, failing which it would be open to the police to seize the same and report compliance of this Court within a period of six weeks from today.

Appeal allowed.”

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. *Therefore, in our view, the decision taken by the learned Single Judge of this Court in CRR No.3231 of 2014 on 12.12.2014 based on the decision in Dinesh Kumar Verma's case (supra) does not reflect the correct proposition of law. In fact, the views taken by the learned Single Judges of this Court in **Rajesh Kumar vs. State of Haryana, 2007 (2) RCR (Criminal) 561, Iqbal Singh vs. State of Punjab, 2013(2) RCR (Criminal) 612 and Raghbir Singh alias Beera vs. State of Punjab, 2006(4) RCR (Criminal) 343**, reflect the correct proposition of law.*

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.*

23. *The revision petition be posted before the learned Single*



Judge for determination of the revision in the light of the reference answered by us.”

9. Further in **Mubarik Khan’s case (supra)** this Court held as under:-

“ 9. The learned counsel for the petitioner contends that the vehicle in question was taken into possession in two different cases and is currently parked at Police Station Uchana, District Jind. The vehicle had been purchased after obtaining a loan as was evident from the EMIs being paid by the petitioner. If the vehicle was not released on superdari its condition was likely to deteriorate on a day-to-basis. The petitioner undertaken not to change the colour of the vehicle nor sell it during the pendency of the Trial and would also produce it as and when required. He was ready and willing to furnish a heavy surety/guarantee for the release of the vehicle on superdari. Even otherwise, in FIR No.392 dated 24.12.2020 which is the other case in which the vehicle had been found to be involved it had already been released on superdari. Reliance is placed on the judgments in the cases of **Rahul Kumar @ Rai Vs. State of Punjab 2019(3) Law Herald 2266 and Gurbinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492.**

10. A reply dated 16.04.2024 by way of an affidavit of Naveen Sindhu, HPS, Deputy Superintendent of Police, Uchana, District Jind has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that since the vehicle was used in the crime the vehicle was not liable to be released on superdari. He, however, concedes that in FIR No.392 dated 24.12.2020 this Court had passed an order releasing the vehicle on superdari on the imposition of certain conditions.

11. I have heard learned Counsel for the parties.

12. In **Sunder Bhai Ambala Desai's case (supra)** the Hon'ble Supreme Court has held as under:-

“ 15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions



should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. *However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.*

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.***

18. *In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.*

19. *For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose*



is served by such storing.

20. Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Criminal Procedure Code, 1973 should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Criminal Procedure Code, 1973 are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court regard to such articles are implemented properly.

Adjourned for three weeks.

Order accordingly.

13. The aforesaid judgment has been followed by this Court in **Gurbinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492** .

14. In view of the aforementioned judgments it is apparent that if the vehicle remains parked in the police station for a considerable period of time, it would become unfit for being plying on the road as keeping it parked in the sun and rain could damage its tyres, colour, machinery, battery as also interiors of the vehicle. The value of the vehicle would also diminish in such a situation.

15. Thus the present petition is allowed. The vehicle bearing registration No.MP-09-CV-4289 is ordered to be released to the petitioner/registered owner on superdari on general terms and conditions subject to the petitioner/registered owner executing personal bonds in the sum of Rs.4 lakh with one surety of the like amount to the satisfaction of the CJM/Duty Magistrate with an undertaking that as and when the Trial Court would require the



said vehicle, he would produce the same before it at his own cost. He shall also not sell, transfer or alter the physical condition of the vehicle in any manner. The petitioner shall also furnish an undertaking that he will not use or permit its use for commission of any offence and in case of involvement of the petitioner or the aforementioned vehicle in any case it would be open to the prosecution to move an application for cancellation of the order releasing the vehicle on superdari.”

10. In view of the above discussion, the present petition is allowed and the vehicle in question i.e. Motor Cycle make Hero Splendor Plus bearing registration number HR02AX 0360 is ordered to be released to the petitioner/registered owner on superdari on general terms and conditions on his furnishing indemnity bonds/surety bonds of the like amount or on the terms and conditions which may be imposed by the Chief Judicial Magistrate/Duty Magistrate, Yamuna Nagar at Jagadhari.

11. 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 court, if so required.

(JASJIT SINGH BEDI)
JUDGE

May 24, 2024
Vinay

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