

said truck, filed application for its release on Superdari which was dismissed by learned Additional Sessions Judge, Kaithal vide order dated 12.12.2023.

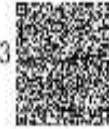
3. Feeling aggrieved, the petitioner has filed the present petition for quashing/setting aside of the above said order.

4. Reply by way of affidavit of Sh. Lalit Kumar HPS, Deputy Superintendent of Police, Kalayat, Kaithal has been filed on behalf of the State. It is submitted therein and it has been argued by learned State counsel that the Truck in question was used by the son of the petitioner. This truck had been used previously also for the same purpose in case arising out of FIR No.54 dated 22.03.2022 registered under Sections 15(c), 27-A & 29 of NDPS Act. It was released on superdari at that time, but by misusing the said relief, the son of the petitioner had used it again for carrying contraband, thereby dis-entitling the petitioner from seeking release of the same. While arguing that the application for release of the vehicle in question on superdari, had been rightly dismissed by learned trial Court, it is urged that the order passed by the trial Court does not deserve to be interfered with and the petition does not deserve to be allowed.

5. I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

6. The question for consideration before this Court is whether in the peculiar circumstances of the case, the vehicle in question can be ordered to be released on Superdari the same being used in commission of offence of similar nature that was allegedly committed previously.

7. Section 451 of the Cr.P.C., which empowers the Court to pass



order for custody and disposal of property pending trial is relevant for the purpose. It reads as under:-

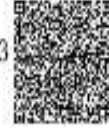
“When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise 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.

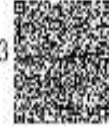
(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

8. The question as to how the Police should deal with the vehicles seized, either on account of use in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of theft etc.. had been dealt with by the Hon’ble Supreme Court in ***Sunderbhai Ambalal Desai Vs. State of Gujarat 2002 (10) SCC 283*** wherein it was observed that there was no use to keep seized vehicles at the police stations for a long period. It is for the Magistrate to pass the appropriate orders immediately by taking bonds and guarantee as well as



security for return of the said vehicles. Further, in ***General Insurance Vs State of Andhra Pradesh (SC) 2010 (6) SCC 768***, the Hon'ble Supreme Court issued some direction in addition to the directions issued in ***Sunderbhai Ambalal Desai's case(supra)*** and also observed as follows:-

"15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district."



9. Subsequently, a Division Bench of this Court while answering the reference to the question as to whether vehicles seized under the NDPS Act should be released on superdari or not, observed in ***Gurbinder @ Shinder Vs. State of Punjab, 2016 (4) RCR (Crl.) 492*** that the vehicle used for transporting Narcotic Drugs and Psychotropic Substances can also be released on superdari by invoking the provisions under Section 451 of Cr.P.C. The observations are as hereinunder:-

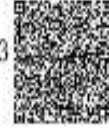
"11. The question that arises for determination is whether "Section 451 Cr.P.C. can be applied while considering the plea for interim custody of the vehicle seized under the NDPS Act. Section 51 of the NDPS Act which has a bearing on this issue reads as follows:-

"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

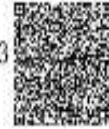


NDPS Act, the same will have to be applied as mandated under Section 51 of the said Act.

*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. xxxx

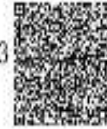
15. A conveyance seized under the NDPS Act shall be liable to confiscation only when the owner of the conveyance who was given an



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 v. State of Punjab** decided on 12.12.2014, having relied upon the decision of the Hon'ble Supreme Court in **Union of India v. Dinesh Kumar Verma, 2005(9) SCC 330** and judgment of the Division Bench of this Court in **Tarsem Singh v. 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.”

10. The Division Bench ultimately came to the conclusion that there was no provision under the NDPS Act debarring the release of the vehicle for interim custody and the provision under Section 451 Cr.P.C were not inconsistent with the provision of NDPS Act, therefore no differential treatment to the vehicle seized under the NDPS Act is contemplated. It was therefore, held that a vehicle used for transporting the Narcotic Drugs and Psychotropic Substances could also be released on superdari invoking the provision under Section 451 Cr.P.C.

11. On applying the above discussed proposition of law to the peculiar facts and circumstances of the present case, it is observed that though undoubtedly the vehicle in question was used for the purpose of carrying contraband on being released on superdari previously in connection with case arising out FIR No.54 dated 22.03.2022 registered under Section 15(c) (Section 27-A, 29 added later on) of NDPS Act at Police Station Rajound, Kaithal. However, it has to be considered that if it is allowed to be retained on the ground of being case property liable to confiscation at the time of deciding the case as it would be certainly kept idle in the police station, in that circumstance, there is strong likelihood of the vehicle in question being converted into junk. Even passing of the final order of confiscation of this vehicle might take long time, thereby, rendering this vehicle as wholly unserviceable and of no use by State also.

12. In view of above facts and circumstances, it will be appropriate



that the vehicle is released on superdari in favour of the registered owner on additional conditions, besides usual terms and conditions, that the registered owner will not use or allow any person to use the vehicle in question for commission of any offence including offence under the NDPS Act.

13. In view of the above discussion, the present petition under Section 482 of the Cr.P.C. is allowed and the vehicle in dispute bearing registration No. No.HR-64A-8831 is ordered to be released on superdari in favour of its registered owner on furnishing superdaginama to the satisfaction of learned Additional Sessions Judge, Kaithal/Chief Judicial Magistrate/Illaqa Magistrate on the conditions:

- (i) that he will preserve the said truck in the same condition during the pendency of the trial;
- (ii) that he will not dispose of the same during the pendency of the trial;
- (iii) that he will produce the same in the trial Court as and when so ordered by the trial Court; and
- (iv) that he will not use or allow any person to use the vehicle in question for commission of any offence including offence under the NDPS Act.

14. A copy of this order be sent to learned Additional Sessions Judge, Kaithal for requisite compliance.

[MANISHA BATRA]
JUDGE

31.08.2024
Deepak Patwal