

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33172-2017 (O&M)
Date of Decision: January 16, 2024

BALJIT KAUR @ BALJITIPetitioner
Versus
STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D.S. Virk, Advocate for the petitioner.
Mr. Gurlal Singh Dhillon, AAG, Punjab.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside of the order dated 26.05.2017 passed by the Court of Addl. Sessions Judge, Amritsar whereby an application filed at the instance of petitioner for release of gold ornaments allegedly recovered from her at the time of registration of FIR bearing No.72 dated 11.08.2012 under Sections 21, 22, 25, 29, 62-A, 68-A, 61 and 85 of NDPS Act registered at P.S. Khalchian, Amrtisar has been dismissed.

2. Learned counsel for the petitioner submits that gold ornaments as described in the application (Annexure P-4, Page-47) were recovered from the petitioner at the time of her arrest in the aforementioned FIR and this fact has even been admitted by the respondent-Investigating Agency in its recovery memos forming part of the challan as well as proved by the Investigating Officer namely

CRM-M-33172-2017 (O&M)

SI Gurpreet Singh while appearing in the Court as PW-4 and thus, the said articles ought to have been released in her favour though, wrongly declined by the trial Court.

3. On the other hand, learned State counsel opposes the prayer made in the application while submitting that the petitioner has failed to produce any document/receipt regarding purchase of the aforementioned gold ornaments thus, her prayer cannot be accepted.

4. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner as no useful 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. "

5. 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 v. 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. "

6. 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:-

CRM-M-33172-2017 (O&M)

- (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.
- (4) 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 be 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. "

7. Relying upon Sunderbhai's case (supra), a Division Bench of this Court in the case of "**Gurbinder Singh @ Shinder v. State of Punjab**" reported as 2016 (4) RCR (Criminal) 492 bearing Case No CRR No.1765 of 2015 decided on 19.09.2016, while adjudicating upon 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 and 13 of the same are reproduced here under:-

CRM-M-33172-2017 (O&M)

"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. "

8. 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

CRM-M-33172-2017 (O&M)

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 v. 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 SANJAY GUPTA by him".

9. In the present case, the petitioner was implicated in FIR No.72 dated 11.08.2012 under Section 21 of the NDPS Act and at the time of her arrest, undisputedly, certain gold ornaments as mentioned in the application in hand were recovered from her and the said fact was even noticed by the Investigating Officer in the recovery memos as well as in his statement before the trial Court while appearing as PW-4. The petitioner was though convicted vide judgment dated 11.09.2015, however, the same has been assailed at her instance by way of an appeal bearing No.CRA-S-4349-SB-2015 which is pending adjudication. During pendency of the appeal, the petitioner moved an application for release of the aforesaid gold ornaments. Considering the fact that the factum of recovery of gold ornaments from the petitioner

CRM-M-33172-2017 (O&M)

has been positive case set up by the prosecution during the investigation as well as in the trial, besides the absence of any proceedings having been initiated in terms of Sections 60 and 68 of the NDPS Act, 1985 relating to the confiscation of the recovery of Gold ornaments in question, the same ought to have been released in favour of the petitioner, subject to outcome of the appeal filed at her instance and also subject to satisfaction of the trial Court as regards the safety and security of the case property i.e. the ornaments recovered from the petitioner.

10. 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.

11. 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.

12. Disposed of in the aforesaid terms.

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

16.01.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No

