

2024:PHHC:032573

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

273 CRM-M-56691-2022 (O&M)
Date of decision:- 06.03.2024

Tejas Chandubhai Soni ...Petitioner

Versus

Union of India, NCB, Sub Zone, Amritsar ...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Vikram Satpal Anand, Advocate for the petitioner.

Mr. Tajeshwar Singh Sullar, Central Govt. Counsel
for UOI along with IO Rakesh Kumar
for respondent.

PANKAJ JAIN, J. (Oral)

CRM-6815-2024

This is an application for preponement of the main case.

Allowed as prayed for.

Main case is taken on board today itself.

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1. Present petition is directed against order dated 03.08.2022 (Annexure P-3) passed by Judge, Special Court, Amritsar whereby application filed by the petitioner seeking release of vehicle i.e Volkswagen Passenger Car bearing registration No.GJ24-K-5559 on sapurdari stands declined.
2. Central Govt. Counsel for NCB on instructions from IO Ramesh Kumar, NCB submits that 17 Kgs. of Charas was recovered from the aforesaid vehicle. Crime case No.68 dated 13.12.2020 under

Sections 8, 20, 25, 29 and 60 of NDPS Act was filed before the Judge, Special Court, Amritsar.

3. Admittedly, the present petitioner was not amongst the accused in the said matter. The petitioner asserts himself to be registered owner and moved an application seeking release of the vehicle which stands declined vide impugned order. The trial Court dismissed the application on the ground that NCB took a specific plea that the applicant has not joined the investigation and the vehicle in question and the applicant are required for investigation. The same is the stand taken before this Court.

4. Counsel for the petitioner submits that the petitioner was neither arraigned amongst the accused in the complaint filed before the trial Court nor he has ever been summoned to join the investigation. Thus the ground taken by the NCB to oppose the prayer of the petitioner is misconceived.

5. Central Govt. Counsel for the UOI appearing for NCB strongly opposed the release of the vehicle on the ground that the petitioner has not joined the investigation, However, on being asked as to where are the summons asking the petitioner to join the investigation, he admits that there is nothing on record. Likewise, he is not in a position to dispute the fact that the petitioner is not amongst the array of accused in the complaint.

6. The issue regarding release of vehicle on sapurdari is no more res integra and has been settled by an authoritative pronouncement of Hon'ble Apex Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* 2003 (1) RCR (Criminal) 380, wherein, the following

observations were made:-

“In our view, the powers under Section 451 Criminal Procedure Code, 1973 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 articles 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.”

7. A Division Bench of this Court in ***Gurbinder Singh @ Shinder Vs. State of Punjab, 2016(4), RCR (Criminal) 492*** examined the issue as regards release of vehicles during pendency of the trial under the NDPS Act. View taken was that in the light of Sections 451/452/457 Cr.P.C., the vehicles in question can be released on superdari as nobody can be benefited out of idle parking of the vehicle unattended in the premises of the police station. Relevant portion of the said judgment reads as under:-

“11. The question that arises for determination is whether Section 451 Cr.P.C., 1973 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

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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., 1973 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., 1973 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 For Subsequent orders see CRM-23019-2016, 8 of 14 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. In view of above, this Court finds that impugned order dated 03.08.2022 cannot be sustained and is hereby ordered to be set aside.
9. Accordingly, the present petition stands allowed.
10. Trial Court is directed to release the vehicle after ascertaining the ownership thereof in accordance with law within a period of two weeks.

(PANKAJ JAIN)
JUDGE

06.03.2024
spn

Whether speaking/reasoned : Yes
Whether Reportable : No