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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-40745-2021 (O&M)
Date of decision: 13.02.2025**

Krishan Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

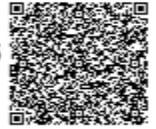
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Himani Anand, Advocate and
Ms. Vandana Bhatia, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

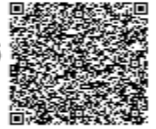
1. Present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') read with Sections 451 & 457 of Cr.P.C. [*now Section 528, 497(1), 503 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') respectively*] seeking quashing of impugned order dated 09.08.2021 (Annexure P-4) passed by learned Additional Sessions Judge, Karnal, in FIR No.331 dated 23.07.2019 under Sections 15, 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS



Act'), registered at Police Station Butana, District Karnal, vide which application filed by the petitioner to release the cash amount of Rs.4,50,000 on supardari was dismissed.

2. Succinctly, facts of the case are that on 23.07.2019, the police while patrolling from Karnal to Taraori identified one black coloured Splender Plus motorcycle bearing registration No.HR-05-AU-1458 and on reaching adjacent to them, co-accused threw a heavy bag on the footpath, from which poppy husk weighing 02 kg and 100 grams was recovered. Thereafter, in the disclosure statement made by Sukhbir @ Bittu and Rakesh (co-accused), it was alleged that the petitioner was supplier of the narcotic substance and thereafter, the petitioner was arrested on 04.06.2021. During custody of petitioner, recovery of one Verna car bearing registration No.HR-05-AQ-9126 and cash amount of Rs.4,50,000/- was affected therefrom. However, no recovery of narcotic substance from the conscious possession of the petitioner was affected. Subsequently, the petitioner was released on regular bail by learned Addl. Sessions Judge, Karnal vide order dated 18.08.2021 (Annexure P-2).

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner was not named in the FIR (*supra*) and he was nominated on the basis of disclosure statement made by co-accused, which has no evidentiary value in the eyes of law. Additionally, the car was released on superdari vide order dated 18.06.2021 (Annexure P-3) passed by learned Additional Sessions Judge,

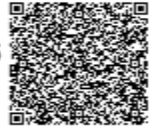


Karnal, however, the amount (*supra*) is still confiscated. Learned counsel for the petitioner further contends that it is immaterial whether the amount recovered is out of proceeds of narcotic substance or otherwise.

4. *Per contra*, learned State counsel contends that the petitioner was nominated on the basis of disclosure statement made by co-accused, from whose possession 02 kg and 100 grams of poppy husk was recovered. Further, the cash amount recovered from the petitioner is the case property being proceeds from sale of narcotic substance and the same are amenable to confiscation and no question of release of cash amount on superdari arises.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that no purpose is going to be served by keeping the currency for long duration in police custody and further, there is no provision in NDPS Act debarring release of cash amount during pendency of trial. A bare perusal of Section 451 of Cr.P.C. lays down a procedure for disposal of property during the pendency of trial and the same reads as under: -

“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



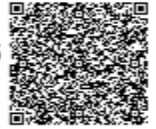
necessary, order it to be sold or otherwise disposed of.

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.”

6. Reliance in this regard can be placed on the judgment rendered by the Hon’ble Supreme Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002(10) SCC 283***, wherein it has been held that Section 451 of 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) the 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. In this judgment, with respect to “valuable articles and currency notes”, it was held that it will serve no purpose by keeping precious stones and currency notes in police custody for years till the trial is

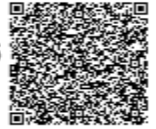


over. Therefore, if the material on record indicates that such articles belong to complainant, then they be handed over to him/her after preparing panchanama and taking photos and release the same on bond and security. In this regard, reliance is placed upon a judgment of the Coordinate Bench of this Court in the case of ***Maya @ Billo Vs. State of Punjab, 2023(4) RCR (Criminal) 850***, wherein the following was observed: -

“...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 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.”

7. Further, reliance can also be placed on judgment of the Coordinate Bench in ***Ravi Kumar Vs. State of Haryana, 2023(2) DC (Narcotics) 72***, wherein it was held as follows: -

“There is no provision under the NDPS Act debarring the release for interim custody of seized articles. 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.”



8. As an upshot of above discussion, by keeping the recovered money in police custody will be futile, therefore, present petition is allowed and the impugned order dated 09.08.2021 (Annexure P-4) passed by learned Additional Sessions Judge, Karnal is hereby set aside. The matter is remanded back to learned Additional Sessions Judge, Karnal with a direction to freshly decide the application filed by the petitioner to return the cash amount on superdari during pendency of the trial.

9. The aforesaid recovered cash amount shall be released in favour of the petitioner against coloured photocopies of the currency notes to be retained by the prosecution under due acknowledgment by the petitioner as regards their numbers along with an undertaking that he will not dispute the identity thereof during trial. Further, the petitioner is directed to return back the equivalent amount, by virtue of his undertaking, on conclusion of the trial, if learned trial Court deems it appropriate to initiate the proceedings as spelt out under Sections 60 & 63 of NDPS Act.

10. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

13.02.2025
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No