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Punjab and Haryana High Court

M. Jeyapaul J. Sneh Prashar J.

Gurbinder Singh @ Shinder v. State Of Punjab

CRR No.1765 of 2015

19.09.2016

Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) – Criminal Procedure Code, 1973 (II of 1973) Section 451, 457 – Superdari – 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 Ambala 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.

Ms. Ruchi Sekhri, advocate for the petitioner. Mr. R.S. Randhawa, addl.a.g., punjab.

M. JEYAPAUJ, J.

1. Petitioner Gurbinder Singh @ Shinder sought for release of Swift Dzire car bearing Engine No.D13A5100071 and Chassis No.MA3FSEB1S00478125 on sapurdari before the trial Court. The trial Court having made an observation that the car was used for carrying the contraband as per the averments found in the FIR and that the trial was yet to begin, chose to dismiss the petition filed by the petitioner praying for release of vehicle on sapurdari. Aggrieved by the rejection of the plea for release of the car on sapurdari, the present revision petition was preferred by the petitioner.

2. Learned Single Judge of this Court having heard the submissions made on either side passed an order as follows:-

"Learned counsel for the petitioner argued for release of vehicle in case FIR No.12/15 dated

16.01.2015 under Section 21 of the NDPS Act, registered at Police Station B-Division, Amritsar and has cited judgments passed by 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*, in which the vehicles in the NDPS Act case have been ordered to be released on sapurdari.

This Court has already taken different view in CRR No.3231 of 2014 decided on 12.12.2014 titled as Kirandeep vs. State of Punjab, that the vehicle in NDPS Act case cannot be released on sapurdari. Therefore, there are different views of the Single Benches of this Court.

In view of the above position, the present case be put up before the Hon'ble Acting Chief Justice for referring it to a larger Bench on the point 'whether vehicle used for transporting the narcotics etc. can be released on sapurdari or not'.

3. In the above background, the present revision petition has been referred to decide the point whether the vehicle used for transporting the narcotics could be released on sapurdari or not.

4. The brief facts of the case as described in the FIR are that 20 gms. of Heroine was recovered from the dashboard of Swift Dzire Car bearing Engine No.D13A5100071 and Chassis No.MA3FSEB1S00478125. The petitioner and one Sukhdev Singh were shown as accused. The Swift Dzire car was seized by the police.

5. It was contended by the petitioner that the Swift Dzire car seized by the police is lying parked in the police station. The condition of the vehicle is deteriorating day by day as it is kept parked in the open space. The further grievance of the petitioner is that despite "No Objection" expressed by the police, learned Addl.Sessions Judge, Amritsar chose to dismiss the plea for releasing the vehicle for interim custody.

6. Learned counsel appearing for the revision petitioner drew the attention of this Court to the landmark judgement in *Sunderbhai Ambalal Desai vs. State of Gujarat, 2003(1) RCR (Criminal) 380* and submitted that the Court has to invoke the provision under Section 451 Cr.P.C. for release of the vehicle, as otherwise, the vehicle parked in the open space will go waste. It is her further submission that the vehicle cannot be kept parked till the Addl. Sessions Judge, Amritsar reaches a conclusion in the trial after affording opportunity to the petitioner that the vehicle is liable to confiscation. Inasmuch as there is no specific bar under the NDPS Act, 1985, the provisions under Section 451 Cr.P.C. will have to be resorted to for releasing the vehicle for interim custody, it was contended.

7. Learned State counsel vehemently submitted that the vehicle seized under NDPS Act is liable to be confiscated. As observed by the Addl.Sessions Judge, Amritsar the vehicle would be required for exhibition during the course of trial. At any rate, the respondent has no objection in releasing the vehicle for interim custody, it was submitted.

8. Let us first deal with the relevant provisions under the Cr.P.C. which have bearing on the

issue involved. Sections 451 and 452 and 457 Cr.P.C. read as follows:-

"451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during an 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.

452. Order for disposal of property at conclusion of trial. -

(1) When an inquiry or trial in any Criminal Court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the court, engaging to restore such property to the court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of. (5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

457. Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate

may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

9. On a bare perusal of the above three provisions, one can come to a conclusion that each of those provisions deal with a different situation. Section 451 Cr.P.C. deals with interim custody of the seized property which has been produced before the Court. Section 452 Cr.P.C. speaks of the disposal of the seized property after enquiry or trial in a criminal Court is concluded. Section 457 Cr.P.C. applies to a situation where the property which has been seized by the police was not produced before the Court.

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 Sunderhai 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 discharged, 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.