

CRM-844-2025 in
CRA-S-4055-2024

VIJAY KUMAR VS STATE OF PUNJAB

Present: Mr. Puran Singh Hundal, Sr. Advocate with
Mr. Vikramjeet Singh,
Mr. Gursahib Singh Hundal, Advocate,
Ms. Arshpreet Kaur, Advocate
for the applicant-appellant.

Mr. Subhash Godara, Addl. A.G., Punjab.

Present application has been filed under Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), Section 498 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') read with Section 528 of BNSS for staying the confiscation of car bearing registration No.HR-25C-9870, Swift, white shade, which has already been released on superdari by learned trial Court.

FACTUAL MATRIX AND CONTENTIONS

2. Learned senior counsel for the applicant-appellant contends, *inter alia*, that in light of Section 51 of the NDPS Act, provisions of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') (*now BNSS*) shall apply to the seizure of any article or vehicle, provided they are not repugnant to the provisions of NDPS Act. It is argued that while the NDPS Act imposes a specific bar on the release of a seized vehicle, provisions of Sections 451, 452, and 457 of Cr.P.C. are not inconsistent with the NDPS Act. Therefore, in view of the enabling provision contained in Section 51 of NDPS Act, these provisions must be applied to all cases of seizure and confiscation. Section 51

of NDPS Act 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 as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures under this Act.”

3. Further, Sections 451 & 452 of Cr.P.C., which are relevant for the adjudication of this application, read as follows: -

“Section 451 - Order for custody and disposal of property pending trial in certain cases.

(i) 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.

Section 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 securities, 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.”

4. Learned senior counsel for the applicant-appellant further contends that a bare perusal of the aforementioned provisions clearly establishes that Section 451 of Cr.P.C. pertains to the grant of *superdari* of a seized vehicle during the pendency of the trial, while Section 452 of Cr.P.C. governs the disposal of seized property upon the conclusion of the trial. Referring to Section 452(2) of Cr.P.C., learned senior counsel submits that even after conclusion of the trial, a vehicle seized by the investigating agency may be released on *superdari* upon the execution of a bond. In the present case, the applicant-appellant has already obtained *superdari* of the vehicle in question during pendency of the trial under Section 451 of Cr.P.C. Furthermore, in view of Section 452(4) of Cr.P.C., no order for confiscation under Section 451(1) of Cr.P.C. can be passed until the appeal filed by the applicant-appellant against confiscation is disposed of. Additionally, Section 452(5) of Cr.P.C. defines the term 'property,' which includes the vehicle of the applicant-appellant, that was seized during the investigation. To fortify his case, reliance is placed upon the judgment of the Hon'ble Supreme Court rendered in ***Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (1) SCC 283*** and an order dated 19.12.2024 passed by the Coordinate Bench of this

Court in **CRM-49441-2024 in CRM-44389-2024 in CRA-S-3202-2024** titled as ***Kuldeep Singh Vs. State of Punjab.***

5. *Per contra*, learned State counsel opposes the prayer made by the applicant-appellant on the ground that he has been convicted for an offence punishable under Section 15 of NDPS Act and sentenced to rigorous imprisonment for a period of 10 years, along with a fine of Rs.1,00,000. It is duly established on record that the vehicle in question was used by the applicant-appellant for the transportation of a prohibited narcotic substance. Therefore, learned Judge of the Special Court, Bathinda, has rightly passed the order of confiscation upon conclusion of the trial.

OBSERVATIONS AND ANALYSIS

6. Having heard learned counsel for the parties and perused the record with their able assistance, it transpires that main thrust of the argument advanced by learned senior counsel for the applicant-appellant is the invocation of Sections 451 & 452 of Cr.P.C. in light of Section 51 of NDPS Act. However, reliance on the judgment of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai***'s case (*supra*) does not support the applicant-appellant's case. The Hon'ble Supreme Court, in ***Sunderbhai Ambalal Desai***'s case (*supra*), did not specifically deal with the confiscation of a vehicle owned by a convict in NDPS cases after conclusion of the trial. Instead, the Court took judicial notice of the fact that a large number of seized

vehicles and articles remain in police custody, unattended. It was concluded that there is no purpose in keeping such seized vehicles in police stations for prolonged periods. Accordingly, the Court directed jurisdictional Magistrates to exercise their powers under Section 451 of Cr.P.C. expeditiously and entrust interim custody of such articles and vehicles, seized during the investigation, to their owners or to persons entitled to possession. The Court further held that the owner of the property should not suffer undue hardship and that seized articles can be produced before the concerned Court during trial as and when required.

7. At this juncture, this Court would like to examine the provisions of Sections 60 & 63 of NDPS Act, which are reproduced as under:

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation. —

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance 2[or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance 2[or controlled substances] which is liable to confiscation under sub-section (1)

and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance 2[or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2[or controlled substances], 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 confiscations.—

(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 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.”

8. In ***Gurbinder Singh @ Shinder Vs. State of Punjab, 2016(4) RCR (Crl.) 492***, a Division Bench of this Court answered a reference from a Single Bench and concluded that the vehicle seized under NDPS Act can be released on *superdari* under Section 451 of Cr.P.C. and in the said judgment, speaking through M. Jeyapaul, J., the following was held: -

“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.”

9. The Division Bench of this Court in **Gurbinder Singh @ Shinder**'s case (*supra*) has, therefore, categorically held that the vehicle in question is liable to confiscation only on conclusion of the trial and a vehicle seized under NDPS Act cannot be kept, till an order of confiscation is passed on conclusion of trial.

10. Recently, a two Judge Bench of the Hon'ble Supreme Court in **Bishwajit Dey Vs. The State of Assam, 2025(1) RCR (Crl.) 486** has dealt with the issue of release and confiscation of the vehicles seized under NDPS Act *in extenso* and speaking through Manmohan, J., the following was observed: -

“21. Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation if the

owner of the seized vehicle can prove that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.

22. This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance in the interim pending disposal of the criminal case.

23. In the absence of any specific bar under the NDPS Act and in view of Section 51 of NDPS Act, the Court can invoke the general power under Sections 451 and 457 of the Cr.P.C. for return of the seized vehicle pending final decision of the criminal case. Consequently, the trial Court has the discretion to release the vehicle in the interim. However, this power would have to be exercised in accordance with law in the facts and circumstances of each case."

11. The question, that arises for consideration of this Court in the present case, is whether learned trial Court can confiscate the seized vehicle by applying statutory scheme to the factual matrix of the case.

12. As far the arguments advanced by learned senior counsel for the applicant-appellant regarding the applicability of Section 452 of Cr.P.C. are concerned, the same are liable to be rejected. The NDPS Act contains specific provisions governing the confiscation of narcotic substances, articles, goods used for concealing drugs, and the sale proceeds of illicit drugs. Section 63 of

NDPS Act lays down the procedure for confiscation. Accordingly, the provisions of Section 63 of NDPS Act would apply to the confiscation of the vehicle in question by learned trial court, rendering Section 452 of Cr.P.C. inapplicable. A bare reading of Section 63 of NDPS Act reveals that vehicles, goods used in the illicit trafficking of narcotic substances and the sale proceeds or drug money are liable to confiscation. Sub-section (1) and proviso to Section 63 of NDPS Act mandates that the Court must determine whether any article or thing seized under the NDPS Act is liable to confiscation under Sections 60, 61 or 62 of NDPS Act before passing an order of confiscation. Furthermore, Section 63 of NDPS Act imposes a bar on confiscation until the following conditions are satisfied:

- (i) No order of confiscation can be made before the expiry of one month from the date of seizure.
- (ii) No order can be passed without affording an opportunity of hearing to any person who may claim a right over the seized article or thing.
- (iii) The Court must take evidence in support of any such claim before deciding the matter.

13. Consequently, there is no scope for granting custody of the vehicle under Section 452 of Cr.P.C. after conclusion of the criminal case. At this stage, handing over the car to the applicant-appellant is not

permissible until the matter is fully examined in light of the provisions of Sections 60 & 63 of NDPS Act.

14. In the instant case, the applicant-appellant was convicted by learned Judge, Special Court, Bathinda, vide judgment of conviction dated 22.11.2024 and curiously, the order of sentence was also passed on the same day and while pronouncing the order of sentence, confiscation of the vehicle in question was ordered. Since the criminal proceedings have concluded and the applicant-appellant has been convicted, the Court has determined that the car in question was used for transporting contraband. The manner, in which the order of confiscation was passed in this case, violates fundamental principles of natural justice. The applicant-appellant was not given an opportunity to be heard before the confiscation order was passed, thereby breaching the right to a fair hearing. Additionally, the confiscation was ordered on the same day, as pronouncement of conviction and sentence, without due compliance with Sections 60 & 63 of NDPS Act, which lay down the procedure for confiscation, thereby rendering the order of sentence dated 22.11.2024 as arbitrary and unjust.

15. Further, the Hon'ble Supreme Court in ***Bishwajit Dey***'s case (*supra*) held that where a Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person, who may claim any right to the seized vehicle before passing an order of confiscation



and the seized vehicle is not liable to confiscation, if the owner of seized vehicle can prove that the vehicle was used by the accused persons without knowledge of the owner or connivance and that he had taken all reasonable precautions against such use of seized vehicle.

16. Section 63(1) of NDPS Act elucidates that irrespective of whether the accused is found guilty, acquitted or discharged, learned trial Court must determine whether any item or property seized under NDPS Act is subject to confiscation under Sections 60, 61 or 62 of NDPS Act separately. The process of confiscation is not contingent upon the outcome of the trial and is to be dealt by the Court independently. In fact, Section 63(2) of NDPS Act goes to the extent of stating that the Court's power to order confiscation of a vehicle is not dependent on whether its owner is prosecuted along with other accused individuals. The provision establishes that confiscation can proceed regardless of the involvement of the owner in the trial. If the offender remains unidentified or cannot be located, the Court is still empowered to investigate and determine liability. Following such an inquiry, the Court may proceed with confiscation. Furthermore, as stated above, the first proviso to sub-section (2) of Section 63 of NDPS Act explicitly states that if any person asserts a legitimate claim over the seized property or item, they must be granted a hearing. The plain interpretation of Section 63(2) of NDPS Act is that whether or not an individual has been tried for an offence under NDPS

Act, if they claim any right over the seized property, they must be afforded an opportunity to present their case before any confiscation order is issued.

17. A perusal of the order of sentence indubitably reveals that the procedure as prescribed under Section 63 of NDPS Act was not followed, as no order of confiscation has been passed by following the drill of the aforementioned provisions. No opportunity of hearing was granted to the applicant-appellant to provide any explanation or to adduce evidence in his defence. Learned Special Court based its decision solely on the prosecution's case that the contraband was being transported in the said car, without adhering to the procedural safeguards mandated by law.

18. Considering the strict provisions of the NDPS Act, along with the safeguards outlined in the aforementioned sections, it is essential to interpret such statutes with the understanding that harsher penalties necessitate greater caution. The more severe the punishment prescribed, the more diligently the safeguards provided in the law must be upheld to ensure fairness and due process. Reliance in this regard can be placed on the judgment rendered by a three Judge Bench of the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*. Additionally, it is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to judgment of the Hon'ble Supreme

Court in *Dharani Sugars and Chemicals Ltd. Vs. Union of India*, (2019) 5
SCC 480.

CONCLUSION

19. Resultantly, confiscation of the vehicle without passing an appropriate order under Section 63 of NDPS Act by following the prescribed procedure is illegal, *non est* and unsustainable in the eyes of law. Accordingly, the present application is allowed and the impugned order of sentence dated 22.11.2024 is set aside to the extent of direction to the jurisdictional police authorities to confiscate the vehicle owned by the applicant-appellant.

[HARPREET SINGH BRAR]
JUDGE

Reserved on: 06.02.2025
Pronounced on: 15.02.2025
vishnu