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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14356-2022 (O&M)

Date of decision:02.08.2022

SANJU

...Petitioner

Versus

THE STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Rahul Vats, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

CRM-25664-2022

The instant application has been filed for preponing the date of hearing of main case from 05.09.2022 to some earlier date.

For good, and, valid reasons recorded in the application, the same is allowed, and, the main case is taken up on Board today.

CRM-M-14356-2022

1. The petitioner is an accused in FIR No.404 of 25.08.2021, registered at Police Station City Tohana, District Fatehabad, wherein an offence constituted under Section 18 of NDPS Act, becomes embodied.

2. In the FIR (supra), an allegation is raised against the present petitioner, that at the relevant time, he was riding a motorcycle, and, on his becoming apprehended, at the crime site, by the police, and, from his personal search being made, by the investigating officer concerned, hence 250 grams of

opium became recovered, from the right pocket of the lower of the present petitioner.

3. At the crime site, the crime motorcycle also became impounded. However, subsequently the present petitioner, who is the accused in the FIR (supra), is also the registered owner of the crime motorcycle, hence instituted an application under Section 451 of Cr.P.C., before the learned trial Judge concerned, and, claimed relief for the crime motorcycle being released, on superdari to him, rather during the pendency of the trial.

4. However, the learned trial Judge concerned, through a dis-affirmative order made thereons, and, as embodied in Annexure P-1, obviously declined the relief (supra), to the present petitioner. The present petitioner-accused in FIR (supra), becomes aggrieved from the making of Annexure P-1, and, is led to constitute thereagainst the instant petition before this Court.

5. The invalidity of the impugned order, as, made by the learned trial Judge concerned, is no longer *res integra*, as this Court through a decision made, on 12.05.2022, respectively upon CRR-333-2020, and, upon CRR-844-2022, has held, in the relevant paragraphs 3 to 10 thereof, paragraphs whereof becomes extracted hereinafter, that the above drawn reason is completely legally infirm, and, thereafter had proceeded to release, on superdari, to the petitioner therein, the appositely seized vehicle.

“3. The learned State counsel has vehemently argued, before this Court, that the declinings of the above reliefs to the petitioner, is valid, and, is not liable to be interfered with by this Court. She banks the afore argument, upon the provisions, as contained in Section 60, and, Section 63 of the NDPS Act, 1985 (for short 'Act'), provisions whereof became extracted hereinafter, for hence making their studied, and, circumspect evaluation.

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

1 [(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 [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 [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 [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 [or controlled substances], or any article liable to confiscation under sub-section (1) or subsection (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.

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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:

4. *A reading of sub-section (3) of Section 60 of the Act, unfolds, that the apposite conveyance, wherein the prohibited narcotic or psychotropic substance, becomes carried, is liable for confiscation, yet with a rider that the owner of the vehicle or conveyance concerned, for, saving it from confiscation, being required to prove, that the conveyance concerned, as allegedly became used rather for illegal/illicit purposes, rather was allegedly used, without his knowledge or connivance or of its agent, and/or of the person incharge of the conveyance, and, to also prove, that each of them had taken reasonable precaution against such misuser of the apposite conveyance.*

5. *The above echoings, as carried in sub-section (3) of Section 60 of the Act, are cast in a rigid statutory mould, and, obviously the above carried therein echoings, do impose a strict statutory responsibility, and, besides cast an imperative duty, upon the owner, agent, and, also the driver of the conveyance concerned, and, obviously the discharging, evidence qua therewith, becomes enjoined to be adduced by the concerned (supra), hence for ensuring that the conveyance does not become confiscated to the State concerned, or evidence has to emerge, that each of them had*

no knowledge or inter se connivance in respect of its' being carried thereins, and/or, also rather with the supplier thereof or with the person, who was the occupant in the conveyance concerned, whereupons, reiteratedly alone the conveyance would become saved from confiscation.

6. *However, the above evidence for hence saving the seized conveyance from confiscation, does not exist before this Court nor was adduced before the learned trial Judge concerned. Therefore, though through a reading of sub-section (3) of Section 60 of the Act, when conspicuously rather at this stage, especially when the above statutory burden, as cast upon the owner concerned, has not yet been discharged, hence may constrain this Court to uphold the impugned orders, drawn respectively, by the learned trial Judges concerned.*

7. *Nonetheless, the above rigid provision, is only, with respect to saving from confiscation of the conveyance(s) concerned, but is not invocable in respect of during the pendency of trial, before the learned trial Judge concerned, in respect of the offence, constituted in the Act, rather the seized vehicle through recourses, being made to the mandate of Section 451 of the Cr.P.C., hence becoming yet not amenable for being released on superdari to the apposite owner. The reason for making the afore inference, is drawn, from the factum that there is no provision in the Act concerned, which bars the owner concerned to recourse the mandate of Section 451 of the Cr.P.C., appertaining to the release on superdari of the impounded or seized vehicle, during the pendency of the trial, in respect of NDPS offence(s), hence before the learned trial Judge concerned, especially for ensuring that it becomes saved from deterioration, and, decay, and, also upon some relevant conditions, being imposed upon the owner.*

8. *Be that as it may, the learned State counsel, has yet contested, the ordering for the release of the impounded/seized conveyance to the owners concerned, and, her above submission becomes rested, upon Section 63 of the NDPS Act, specifically, upon, sub-section (1) of Section 63 of the Act, whereins a statutory*

injunction is cast, upon the, learned trial Judge concerned trying an offender qua an offence under the Act, to, irrespective of the verdict of conviction or acquittal or the offender being discharged, to yet draw proceeding under Section 60, 61 or 62 of the Act, relating to the confiscation of “any article or thing”, and, hence, she contends that when in the instant case, the trial is still pending against the offenders concerned, thereupon, this Court may not interfere with the impugned orders.

9. *However, the above submission is also not accepted by this Court. The reason for not accepting the above submission, addressed before this Court, is that, the above submission, becomes rested, upon the factum, that the above mandate, as carried in sub-section (1) of Section 63 of the Act, relates only to an “article or thing seized”, but when the above term or statutory coinage, prima facie, does not explicitly nor impliedly relate to any seized conveyance, wherein, became allegedly transported any narcotic drug or psychotropic substance, thereupon, the mandate of sub-section (1) of Section 63 of the Act, is squarely not applicable to the seized/impounded vehicles concerned.*

10. *Even otherwise, when neither in sub-section (3) of Section 60 of the Act nor in any other provisions of the NDPS Act, there is no statutory provision ousting the mandate, as carried in Section 451 of the Cr.P.C., appertaining to release on superdari, of the seized conveyance to the owner thereof, rather during the pendency of the apposite trial against the offenders concerned. Therefore, when as afore stated, an application for release on superdari, of the impounded vehicle or conveyance, as preferred before the learned trial Judge concerned, hence under Section 451 Cr.P.C., is rather maintainable, and, when at that stage, proceedings for confiscation, are not drawn, and, though may be become ultimately drawn, rather even in the wake of verdict(s) of conviction or acquittal, and/or of discharge being made qua the offenders concerned, and, when yet then the earlier thereto released, on superdari rather the seized conveyance, may yet become amenable for the drawings of confiscation proceedings. Therefore, upto the*

opening, if any, of apposite proceedings of confiscation, and/or, even upto, their termination, the release(s) on superdari, of seized conveyance, to the owner thereof, especially to save it from decay, and, deterioration, may serve the ends of justice. Irrespective of the conclusion (supra) drawn at para 9, the reason(s) for the above inference, becomes embedded in the fact, that in terms of superdari, the owner thereof, may hence become asked to face the apposite thereafter drawn confiscation proceedings, and, also to on their termination, may be asked to produce it, before the authority concerned, for enabling its' becoming ultimately ordered to be confiscated.

6. Therefore, since the above made order has not been stated, at the bar, by the learned State counsel, to become set aside by the Hon'ble Apex Court, in sequel, it acquires the apt conclusive, and, binding effect.

7. Even otherwise, the release, on superdari of the impounded or seized vehicle, even if it becomes impounded in respect of the NDPS Act, yet is construable to be an entrustment of the released crime vehicle, to the offender concerned, and, during the pendency of the trial against the petitioner, the effects of entrustment thereof, to the petitioner remains alive, and, with a resultant effect that, the petitioner becomes enjoined to, as, and, when asked to produce it, for the relevant purpose, before the learned trial Judge concerned, his ensuring its production. The longevity of the entrustment of the motorcycle to the petitioner, is dependent upon a conclusive verdict of acquittal, being made, as then the Court concerned, may without any fetter of any entrustment encumbering the released vehicle, order for its release to the person, as it no longer remains case property, but except when it is required in some other case. Moreover, to avoid its becoming deteriorated in the police compound concerned, the release on superdari, of crime motorcycle, to the petitioner, is both just, and, expedient, and, does not, as discussed in the above extracted paragraphs, of the

verdict, as, made in the petition (supra), deprive the jurisdiction of the competent Court, to yet, upon, the conclusion of trial, and, upon, a verdict of conviction, being recorded to, thereafter proceed to draw proceedings for its confiscation, to the State of Haryana.

8. In nutshell the impugned order of 14.03.2022, is quashed, and, set aside. The crime motorcycle bearing No.HR-23-H-6082 is ordered to be released on superdari, to the petitioner, but subject to his furnishing personal, and, surety bonds in a sum of Rs.25,000/- each, to the satisfaction of the learned trial Judge concerned. Moreover, also with an undertaking that the vehicle concerned, shall not be re-utilized for any transporting therein of any narcotic drugs or psychotropic substance, and, in case it becomes re-utilized for the prohibited purpose (supra), thereupon, it is open to the learned State counsel, to proceed to make an appropriate application, before this Court for the recalling of this order. Moreover, also with a undertaking that the colour, and, number of the motorcycle shall not be tampered, besides with an undertaking that he shall produce it, before the Court concerned, as, and, when he becomes so directed.

9. Disposed of.

02.08.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No