

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

Crl. Appeal No.S-4898-SB of 2015 (O&M)

Date of Decision: 22.12.2015

Hemant Kumar

....Appellant

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Ashok Kumar Khunger, Advocate
for the appellant.

Mr. Rupam Aggarwal, D.A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

Crl. Misc. No.41423 of 2015

This application is for placing on record affidavits of the legal heirs of late Shri Umesh Chander as Annexure A-1 to A-3.

Criminal Misc. Application is allowed and Annexures A-1 to A-3 are taken on record.

Crl. Appeal No.S-4898-SB of 2015 (O&M)

The present appeal has been filed against the impugned order dated 21.10.2015 passed by the Additional Sessions Judge, Fazilka, whereby, the application moved by the appellant for release of his Indigo car bearing registration No.PB-10-EQ-1433 along with other articles on

sapurdari during pendency of the proceedings, has been dismissed.

Briefly, the facts of the case are that the appellant along with other co-accused was facing trial in case FIR No.81 dated 20.07.2015 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act registered at Police Station Bahawwala, District Fazillka as the recovery of 20 kgs. of poppy husk was recovered from the car, which was being driven by him. The said car was in the name of father of the appellant, namely, Umesh Chander, who had expired and thereafter, the appellant became owner of the car, in dispute. The other legal heirs of deceased father- Umesh Chander have given affidavits stating therein that they have no objection in releasing the said car to the appellant. An application was moved by the appellant before the trial Court for release of said Indigo car on *sapurdari* during pendency of the trial but the same was dismissed vide order dated 21.10.2015.

Learned counsel for the appellant submits that the car, in dispute, is lying in the police station and trial will take some time to conclude. He further submits that the value of the car will be depreciated and it will cause a great loss to the appellant.

Learned counsel for the appellant also submits that the case of the appellant is squarely covered by decision of this Court in case ***Jatinder Singh vs State of Punjab 2015(2) RCR (Criminal) 604.***

Learned counsel for the respondent-State opposes the submissions made by learned counsel for the appellant on the ground that the car was used by the appellant to carry narcotic substances and therefore, he is not entitled for release of said car on *sapurdari*.

Heard the submissions made by learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

Undisputedly, the trial in the case is still pending before the trial Court. The question of confiscation of vehicle, in dispute, will be considered along with the main case. It is not disputed that the vehicle is standing in the police station and no useful purpose would be served, if it is allowed to remain there and it will not only depreciate its value but it will result into damage to its condition.

The owner of the car was father of the appellant, who had died during pendency of the proceedings. Other legal representatives of the deceased father have submitted their affidavits, stating therein, that they have no objection in release of the vehicle to the present appellant.

Under the similar facts and circumstances and the law relating to same issue, laid down by Hon'ble the Apex Court in case ***Sunderbhai Ambalal Desai vs State of Gujarat 2003(1) RCR (Criminal) 380***, wherein, it was held that in view of the undertaking given by the appellant, it will be in the interest of justice, in case, the vehicle, in dispute is ordered to be released on *sapurdari* to him on his furnishing proper undertaking.

Similar issue was there in cases ***Harpreet Singh vs State of Punjab 2006(4) RCR (Criminal) 719***, ***Kulwant Singh vs State of Haryana 2008(I) RCR (Criminal) 828(2)*** as well as ***Jatinder Singh's*** case (supra).

By considering the submissions made by learned counsel for the appellant and the view taken in abovesaid judgments, the present appeal is allowed and the impugned order dated 21.10.2015 passed by the Additional Sessions Judge, Fazilka is set aside and the vehicle, in dispute, is ordered to be released on *sapurdari* to the appellant on his executing indemnity bond to the satisfaction of the trial Court with one surety in the like amount and the undertaking to the effect that the appellant will produce the vehicle in the Court, as and when required, in the same condition at his

own cost, risk and responsibility.. He shall also furnish undertaking to the effect that in future, he will not allow his aforesaid vehicle to be used for such an offence. The trial Court is also at liberty to impose any other condition as it may deem fit.

22.12.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE