

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1832-2018 (O&M)
Date of decision: 17.12.2018

Bhupesh Garg

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.K. Singla, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 10.05.2018, vide which the application moved by the registered owner of the vehicle i.e. Swift Car bearing registration No.PB-65F-1264, was dismissed.

Brief facts of the case are that the petitioner is facing trial in FIR No.88 dated 10.10.2017 under Sections 21/25/61/85 of NDPS Act, Police Station City 1, Mansa. During investigation of the said case, the aforesaid vehicle was taken in possession by the police and is presently lying in the premises of Police Station City-1, Mansa.

Learned counsel for the petitioner submits that after framing of the charge, case is now fixed for prosecution evidence, however, it will take some time in conclusion of the trial. It is further submitted that one Lal Chand son of

Waliti Ram, who is the registered owner of the aforesaid vehicle, has moved an application before the trial Court for releasing the vehicle on superdari, on which a report was sought from Police Station City-1, Mansa and it was stated by the police that it has no objection if the vehicle is released on superdari in favour of the registered owner. The trial Court, however, vide impugned order dated 10.05.2018, has dismissed the application on the ground that if the same is released, it may again be misused for the purpose of some illegal activities.

Learned counsel for the petitioner has relied upon **Balbir Singh @ Fauji Vs. State of Punjab, 2010 (1) RCR (Criminal) 908**, wherein in similar circumstances, where a vehicle was taken in possession during the course of investigation, it was held by this Court that by keeping the vehicle in police custody, it will become unfit for loading worthiness and its machinery and tyres will be damaged. The operative part of this judgment reads as under: -

“In the case of Sunderbhai (supra) while dealing with Section 451 of Criminal Procedure Code the Apex Court observed as under: -

“In our view, the powers under Section 451, Criminal Procedure Code should be exercise expeditiously and judiciously. It would serve various purposes, namely: -

(i) Owner of the article would not suffer because of its remaining unused or by its misappropriation.

(2) 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.”

Learned counsel for the petitioner has also relied upon **Nirmal Singh Vs. State of Punjab, 2007 (1) RCR (Criminal) 986**, wherein in similar circumstances again, considering the fact that conclusion of the trial will take some time and no purpose will be served in keeping the vehicle in police custody, it was directed that same be released on superdari in favour of the registered owner, on furnishing an undertaking that as and when the Court require the vehicle, the registered owner will produce the same before the concerned Court in the condition, in which it was released.

The operative part of the judgment in **Nirmal Singh’s** case (supra) is reproduced as under: -

“Learned counsel for the petitioner has submitted that the petitioner is ready to give an undertaking that as and when the Court would require the aforementioned vehicle, he will produce the same in the same condition before the concerned Court.

*In **Harpreet Singh v. State of Punjab, 2006 (4) RCR (Crl.) 719 (P&H)**, this Court while relying upon **Sunderbhai Ambalal Desai v. State of Gujarat, 2003 (1) RCR (Crl.) 380 (SC)** and **Roop Chand and Company v. State of Punjab, 1996 (1) RCR (Crl.) 401 (P&H)** allowed the prayer of the accused petitioner therein for release of the vehicle on superdari in a case under the provisions of Narcotic Drugs and Psychotropic Substances Act.*

Keeping in view the aforementioned facts and the undertaking given by the petitioner, it will be in the interest of justice if the vehicle in question is ordered to be released on superdari to the petitioner on his furnishing the requisite undertaking.

Accordingly, the present revision is allowed, impugned order passed by Judge, Special Court, Barnala dated 24.3.2006 is set aside and the vehicle in question is ordered to be released on superdari to the petitioner on his executing personal bond in the sum of Rs.Three lacs with one surety in the like amount with an undertaking to the effect that as and when the trial Court would require the said vehicle, he will produce the same in the same condition at his own cost before the concerned Court. He shall also furnish an undertaking that in future, he will not use the said vehicle for such an offence.”

Learned State counsel has however raised an objection that present petition has been filed by accused Bhupesh Garg, who is not the registered owner and therefore, the vehicle in question cannot be released in his favour.

In reply, learned counsel for the petitioner has submitted that prayer in this petition is for releasing the vehicle in favour of registered owner Lal Chand itself and therefore, the petitioner as well as the registered owner Lal Chand will furnish an undertaking before the trial Court that they will produce the vehicle as and when required by the trial Court in the same condition as it was released on superdari.

After hearing learned counsel for the parties, I find merit in the present petition.

Considering the fact that the application before the trial Court was moved by the registered owner and the petitioner as well as the registered owner have given an undertaking before this Court that they will produce the vehicle in question as and when required by the trial Court, the impugned order is set aside and the trial Court/Judge, Special Court, Mansa is directed to release the Swift Car bearing registration No.PB-65F-1264 in favour of the registered owner subject to the terms and conditions, it may deem appropriate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

17.12.2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No