

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

CRR-9864-2018 (O&M)

Date of decision: 12.03.2019

Darshan Singh

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.S. Chahal, Advocate for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the order dated 06.12.2018, vide which application filed by the petitioner-registered owner for releasing the three wheeler bearing registration No.HR-39-B-4797 on superdari, in FIR No.289 dated 09.06.2018 under Sections 20/61 of NDPS Act, Police Station Barwala, District Hisar, was declined by the trial Court.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered on the basis of secret information that Bani Singh, his wife Bimla @ Murti and Darshan Singh are involved in the business of selling narcotic substance and are coming in a three wheeler from the side of village Kheri Chopta to Hisar via Barwala and if they are intercepted, some narcotic substance can be recovered. Thereafter, the Investigating Officer intercepted the three wheeler and found that aforesaid three persons are sitting in the same. The petitioner was driver of the three

wheeler and a notice under Section 50 of NDPS Act was given. Upon search, no narcotic was found, however, the petitioner-driver informed that other accused are his neighbours and are in the business of selling narcotics and they have offered him to pay Rs.5,000/- instead of Rs.500/- and due to greed, he has taken them in three wheeler. They have kept a white colour plastic bag and on search, it was found containing 10 kg of ganja.

Learned counsel for the petitioner further submits that the petitioner was granted regular bail vide order dated 27.11.2018 passed in CRM-M-44364-2018, noticing the fact that the petitioner is not involved in any other case and also observing that it will be a debatable issue to be decided during the course of trial whether the contraband recovered was in his conscious possession or not. It is further submitted that the petitioner is a three wheeler driver and the vehicle in dispute is the only source of his livelihood and presently, the same is lying unused in the premises of Police Station Barwala, District Hisar and with the passage of time, it will outlive its utility as conclusion of the trial will take some time. It is thus submitted that the petitioner is ready to furnish undertaking before the trial Court, as required, if the vehicle in question is released on superdari.

Learned State counsel has not disputed the factual position.

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

In **Raghubir Singh @ Beera Vs. State of Punjab, 2006 (4) RCR (Criminal) 343**, this Court has released the car on superdari, considering the fact that no useful purpose will be served if the vehicle in question is allowed to remain in the police station, as it will ultimately result

into a junk. Similar view has been taken by this Court in **Nirmal Singh Vs. State of Punjab, 2007 (1) RCR (Criminal) 986.**

In view of the judgment in **Balbir Singh @ Fauji Vs. State of Punjab, 2010(1) RCR (Criminal) 908**, wherein it has been held by this Court that even in the case under the NDPS Act, if a vehicle is confiscated by the police and is kept unused for a long time, the same can be released on superdari in favour of the registered owner subject to the condition that he will furnish the surety bond before the trial Court and also an affidavit that he will not dispose of the case property till decision of the trial and produce the same as and when required by the trial Court, present revision petition is allowed in the same terms, the order dated 06.12.2018 passed by the trial Court is set aside.

The trial Court is directed to release the three wheeler bearing registration No.HR-39B-4797, in question on superdari in favour of the petitioner-registered owner, subject to the terms and conditions as it may deem fit and also after obtaining an affidavit/bond from the petitioner that he will not sell the three wheeler in question and produce the same as and when required by the trial Court and in case on any substantive date, when some evidence is being recorded and the vehicle is not produced before the trial Court, he will not dispute the identity of the same.

Disposed of accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

12.03.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No