

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

232

CRM-M-7256 of 2020

Date of decision :-20.08.2021

Jasvir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Mohit Jaggi, Advocate for the petitioner.

Mr. S.S. Deol, Deputy Advocate General, Punjab
for the respondent-State.**SUVIR SEHGAL, J.**

Heard through video conferencing.

Vide the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), the petitioner has assailed the order dated 17.01.2020, Annexure P-5, passed by the learned Additional Sessions Judge, SAS Nagar Mohali, dismissing the revision filed by the petitioner challenging the order dated 02.08.2019, Annexure P-2, passed by JMIC (Duty Magistrate), Kharar whereby application of the petitioner for release of vehicle on '*sapurdari*' has been declined.

Counsel for the petitioner contends that his truck bearing registration No.PB-23-T-4467 was seized on the allegation that it was found to be carrying 850 cartons of liquor for sale in Chandigarh and FIR No.128 dated 11.06.2019 was registered under Section 61 of Punjab Excise Act, 1914 at Police Station Kharar. He submits that the petitioner, who was arrested on the spot, has been released on bail by the trial Court vide order dated 19.07.2019, Annexure P-1. Counsel urges that the petitioner filed an application for release of the vehicle on '*sapurdari*' which has been

dismissed by the learned JMIC vide order, Annexure P-3, and the said order

has been upheld in revision vide impugned order, Annexure P-5, despite the fact that the petitioner is the owner of the vehicle. Counsel contends that the impugned orders are erroneous as there is a specific provision in Section 78 (2) of the Punjab Excise Act, 1914 for the release of the vehicle instead of its confiscation, on furnishing of security equivalent to the value thereof.

Petition has been resisted by the State counsel, who by making a reference to the reply filed by way of affidavit of Deputy Superintendent of Police, Sub Division Kharar-I, District SAS Nagar, urges that as heavy quantity of liquor has been effected from the vehicle, which is a case property, it cannot be ordered to be released. State counsel has expressed an apprehension that in case the vehicle is ordered to be released on 'sapurdari', the petitioner may use it for the same purpose again.

I have considered the respective submissions of counsel for the parties and examined the paper book with their able assistance.

Hon'ble Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat**, (2002) 10 SCC 283, noticing the fact that a number of seized vehicles are kept unattended in the premises of the police station and become junk, observed as under: -

"17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for the return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

This Court in **Hardam Singh vs. Vidya Sagar**, 1974 CrL. Law Journal, 1158; **Naf Singh vs. Devender Kumar**, 2004 (1) RCR (Criminal) 987 and **Narinder Kumar Singla vs. State of Punjab and**

another, 2006 (3) RCR (Criminal) 890 held that a seized vehicle can be

given on 'sapurdari' to a person who is found to be its owner or an ostensible owner and this fact is to be normally determined from the documents depicting the name of the registered owner. Insofar as the facts of the case in hand are concerned, there is no dispute that the present petitioner is the registered owner of the truck in question as this fact has been admitted in the report submitted before the trial court and noticed by it in order dated 02.08.2019, Annexure P-3.

The provision as laid down in Section 78 (2) of the Punjab Excise Act, 1914, deserves to be noticed and is reproduced as under: -

“(2) When confiscation may be ordered. - When in the trial of any offence punishable under this Act the Magistrate decides that anything is liable to confiscation under sub-section (1), he may order confiscation:

Provided that in lieu of ordering confiscation, he may give the owner of the thing liable to be confiscated an option to pay such fine as the Magistrate thinks fit:

Provided further that in cases where the quantity of liquor found at the time or in the course of detection of such offence exceeds twenty seven bulk litres of country liquor and foreign liquor, the Magistrate shall order the confiscation of conveyance. However, in lieu of ordering confiscation of conveyance, the Magistrate may give the owner of the conveyance liable to be confiscated an option to pay an amount equal to the value thereof as estimated by the Magistrate:

Provided further that during pendency of trial, conveyance shall only be released on submission of security (in form of cash security or bank guarantee) equivalent to the value of the conveyance thereof.”

As is evident from the above-reproduced provision, the seized vehicle can be released on furnishing of security equivalent to the value of the vehicle. Therefore, this Court has no hesitation in coming to the

conclusion that the vehicle deserves to be released to the petitioner, who is

its owner and the orders passed by both the Courts below suffer from a patent illegality. To allay the apprehension expressed by the State counsel, reasonable restrictions can be imposed so that the vehicle may not be used for any criminal activity.

Ergo, impugned orders dated 02.8.2019, Annexure P-3 and 17.01.2020, Annexure P-5 are set aside. The seized vehicle is ordered to be released to the petitioner on his furnishing security equivalent to the value of the vehicle in terms of provision of Section 78 (2) of the Punjab Excise Act, 1914, to the satisfaction of the concerned trial Court/Duty Magistrate/SDJM, subject to any reasonable condition as the Court deems appropriate, in addition to the condition that the petitioner will furnish an undertaking to the effect that: -

- (i) he will preserve the said vehicle in the same condition during the pendency of the trial;
- (ii) he will not dispose it of during the pendency of the trial;
- (iii) he will produce the vehicle before the Court as and when so ordered; and
- (iv) he will ensure that the vehicle is not involved in any criminal case.

In case of violation of any of the above conditions, liberty is granted to the prosecution to seek modification of the release order.

Petition is disposed of.

20.08.2021

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Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No

(SUVIR SEHGAL)
JUDGE