

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

CRM-M-9771-2020.
Date of Decision:-02.09.2021.

Karaj Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. G.S. Goraya, Advocate for the petitioner.

Ms. Jaspreet Kaur, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

Present petition has been filed challenging the order of the Sessions Judge, Patiala as well as the order passed by the trial Court vide which the condition of bank guarantee had been imposed upon the petitioner while allowing the release of the vehicle Mahindra Bolero on supardari.

Brief facts of the case are that vide order dated 24.01.2020, the Additional Chief Judicial Magistrate, Patiala, was pleased to release the vehicle in question which was Mahindra Bolero on supardari in favour of the petitioner on his furnishing supardari bonds to the sum of Rs.5,00,000/- with one surety in the like amount. However, vide order dated 05.02.2020, the said order was modified and in respect of the submission of bonds to the sum of Rs.5,00,000/-, the supardari was allowed on furnishing supardari bonds in the shape of bank

guarantee to the tune of Rs.5,00,000/-. Aggrieved against the said order, the petitioner had filed a revision before the Sessions Judge, Patiala, which was also dismissed vide order dated 15.02.2020. Feeling aggrieved against the said order, the present petition under Section 482 Cr.P.C. has been filed.

Learned counsel for the petitioner has submitted that the petitioner is a very poor person and is plying the vehicle in question as taxi and the same is the only source of income of the petitioner and his family members and he has no other source of income and, thus, he is not in a position to furnish supardari bonds in the shape of bank guarantee to the tune of Rs.5,00,000/- but he is, however, ready to furnish surety bonds to the tune of Rs.5,00,000/- with one surety in the like amount. Reliance has been placed by learned counsel for the petitioner on judgment dated 21.08.2020 passed by a Co-ordinate Bench of this Court in **CRM-M-23596-2020** titled **Gurwinder Singh Vs. State of Punjab** and another case decided on 05.08.2019 in **CRM-M-32708-2019** titled as **Kulwant Singh Vs. State of Punjab**.

On the other hand, learned State counsel has stated that the impugned orders are legal and in accordance with law and they have been passed under the Punjab Excise Act, keeping in view the provisions of the said Act and, thus, prayed that the present petition may be dismissed.

This Court has heard learned counsel for the parties.

Gurwinder Singh's case (supra) was also a case under the Excise Act and in the said case, a Co-ordinate Bench of this Court had exercised its inherent powers to set aside the impugned orders therein to the extent that bank guarantee was required to be furnished. The relevant portion of the said judgment is reproduced hereinbelow:-

“2. In this petition, the petitioner has assailed the order dated 13.03.2020 passed by the learned Addl. Sessions Judge, Patiala vide which the revision filed by the petitioner against the order dated 24.01.2020 passed by the Judicial Magistrate First Class, Rajpura was dismissed.

3. FIR No.72 dated 11.08.2019 under Section 51 of Excise Act, 1914 was registered against the four persons. Petitioner was not nominated in the FIR but the vehicle involved in the said FIR belongs to the petitioner. The vehicle was taken into possession by the Police. Accordingly, the petitioner filed an application for release of vehicle i.e. Car Swift Desire bearing Regn. No.PB11CF-7437 on the ground of being the registered owner of the same. The vehicle was confiscated by the Police. The prayer for release of the vehicle on Superdari was made before the Judicial Magistrate First Class, Rajpura who accepted the application and ordered for release of vehicle on furnishing bank guarantee to the tune of Rs.5 lacs with one surety of the like amount for release of vehicle in question. But the petitioner was not in position to furnish the bank guarantee, therefore, he filed an application for permitting him to furnish surety / bail bonds instead of bank guarantee amounting to Rs.5 lacs. The said application was dismissed by the Judicial Magistrate First Class, Rajpura on the ground that the Court has no power to review the order dated 12.09.2019 and the said application

was dismissed on 24.01.2020. Against the order dated 24.01.2020 passed by the Judicial Magistrate First Class, Rajpura, the petitioner preferred a revision petition before the Additional Sessions Judge, Patiala. The revision petition has also been dismissed on the ground that the court has no inherent powers under Section 482 Cr.P.C.

*XXX---XXX--Due to financial constraints of the petitioner, it is not possible for him to furnish bank guarantee/ cash security in the sum of Rs.5 lacs. He can furnish surety bond to the tune of Rs.5 lacs to the satisfaction of the trial Court. Reference can be made to **Kulwant Singh Vs. State of Punjab, CRM-M-32708-2019 (O&M)** decided on 5.8.2019.*

6. While exercising the powers under Section 482 Cr.P.C. the impugned orders are quashed. The petitioner is permitted to furnish solvent surety in a sum of Rs.5 lacs for the release of vehicle on Superdari to the satisfaction of the trial Court.

Petition stands disposed of accordingly.”

A perusal of the above judgment would show that one of the main reasons on account of which the requirement of furnishing bank guarantee was done away with, was the financial constraints of the petitioner in the said case. Similar is the position in the present case. To the same effect is the judgment passed in Kulwant Singh's case (supra). The present petitioner is also stated to be a poor person and the said fact is also apparent from the fact that more than one year and six months have gone by and still the petitioner has not been able to get

the possession of the vehicle as he has been unable to furnish bank guarantee to the tune of Rs.5,00,000/-.

Keeping in view the said facts as well as the law on the point, the orders dated 15.02.2020 and 24.01.2020 are set aside to the extent that the petitioner has been asked to furnish supardari bonds in the shape of bank guarantee to the tune of Rs.5,00,000/- and the petitioner is permitted to furnish surety bonds to the tune of Rs.5,00,000/- with one surety in the like amount for the release of the vehicle in question on supardari to the satisfaction of the trial Court.

The present petition stands disposed of accordingly.

(VIKAS BAHL)
JUDGE

September 02, 2021.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.