

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

CRR- 676-2021 (O&M)
Date of Decision:- 13.8.2021

Kashmir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Karanjeet Singh Brar, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 22.6.2021 passed by learned Judge, Special Court, Fazilka vide which an application filed by the petitioner seeking release of Truck bearing Registration No.PB-19H-8798 on superdari has been declined.
2. A few facts necessary to notice for disposal of the petition are that petitioner's son namely Jand Singh was found in possession of 60 kilograms of 'poppy husk' leading to registration of FIR No.63 dated 26.5.2021 at Police Station Khuian Sarvar, District Fazilka against him. The accused was arrested by the police and the truck in question, from which the recovery was effected i.e. truck bearing registration No.PB-19H-8798 was taken into possession by the police.

3. Since Jand Singh (accused), who is stated to be registered owner of the truck in question is behind bars, therefore, an application for release of the truck on superdari was filed through his Special Power of Attorney i.e. his father Kashmir Singh (petitioner) which had been declined by the trial Court mainly on the ground that it is a case of recovery of commercial quantity of contraband. The relevant extract of the impugned order reads as follows :-

“Heard. Report from the SHO Police Station Khuian Sarwar received. Admittedly, recovery of commercial quantity of Poppy husk in 3 bags has been effected from the conscious possession of Jand Singh son of applicant Kashmir Singh, who is also the registered owner of the vehicle in question bearing registration No.PB-19H-8798 which is requested to be released on Superdari. Keeping in view such seriousness of the case and the objection raised by the police regarding release of vehicle in favour of the applicant and likelihood the involvement of vehicle in transportation of contraband as well as the confiscation proceedings to be carried out at the appropriate stage, no ground is made out to release the vehicle on superdari. As such, the present application for release the vehicle on superdari stands dismissed. Papers be attached with the remand papers/main file.”

4. I have heard learned counsel for the petitioner and also the learned State counsel.
5. It is no doubt correct that as per the case of the prosecution the son of petitioner was found in possession of 60 kilograms of 'poppy husk' while he was driving the truck bearing registration No.PB-19H-8798. The truck being case property has been taken into possession by the police. As per

provisions of the NDPS Act, a vehicle which is found to be used by the accused for commission of offence, is liable to be confiscated. However, as on date, the trial is yet to commence and there is no such finding that the accused is guilty of having committed the offence. In case, the vehicle in question is not released on superdari, the condition of the same is likely to deteriorate on account of its disuse and on account of vagaries of weather, which would not be in the interest of anybody, as unnecessarily the value of the truck in question get diminished.

6. There is no such absolute rule that a vehicle found to be used for commission of an offence under NDPS Act, cannot be released on superdari. Nothing to this effect has been shown by the learned State counsel.
7. In these circumstances the impugned order cannot sustain and is hereby set aside. The vehicle in question is ordered to be released to the Special Attorney of the accused subject to proper identification and verification. The needful shall be done by the Trial Court in this regard. It shall be open to the trial Court to impose any such condition as deemed appropriate so as to ensure that the vehicle is duly produced before the trial Court as and when required.
8. The petition stands accepted in the above mentioned terms.

13.8.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No