

CRM-M-27915-2021

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

CRM-M-27915-2021

Date of decision: 12.08.2021

Paisa Singh

...Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Hitesh Verma, Advocate,
for the petitioner.

Mr. Avtar Singh Sandhu, Addl. A.G.Punjab.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

The petitioner has assailed the order dated 06.07.2021 (Annexure P-3) passed by the learned Sessions Judge, Barnala, dismissing the criminal revision preferred by the petitioner against the order dated 08.04.2021 (Annexure P-2) passed by the learned Chief Judicial Magistrate, Barnala, in FIR No.91 dated 25.02.2021, registered at Police Station City Barnala, under Section 61 of the Punjab Excise Act (for short, 'the Act'), whereby the petitioner was directed to furnish the bank guarantee to the tune of Rs.8 lakh or deposit the cash value of the same, for the release of the truck bearing registration No.PAT-5995, Model 1986, on *sapurdari*.

Learned counsel for the petitioner contends that the courts

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below have erred in putting the stringent condition of furnishing the bank guarantee to the tune of Rs.8 lakh. The courts below could have ordered furnishing the security bond equivalent to the value of the vehicle. He further submits that the value of the truck is between Rs.1 lakh to Rs.1.5 lakh. The vehicle has been lying unused since 25.02.2021 and with the passage of time, it will outlive its life span. The petitioner is unable to furnish the bank guarantee due to his poor financial conditions and the truck may be ordered to be released on sapurdari on furnishing of sapurdari bonds by modification of the impugned orders.

Learned State counsel, however, opposes the petition on the ground that the vehicle is involved in excise matter and is liable to be released only on some reasonable condition. The impugned orders do not suffer from any illegality. Therefore, the petition may be dismissed.

I have heard the learned counsel for the parties.

Before delving upon the submissions made by learned counsel for the parties, it will be appropriate to refer to Section 78(2) of the Act, which provides as to when the confiscation of article in respect of which offence is committed, may be ordered. The same would read as under:

“78(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 liters

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of country liquor and foreign liquor, the Magistrate shall order the confiscation of conveyance. Hence, 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 off the conveyance thereof.

After going though the aforesaid provision, this Court is of the opinion that both the courts below have not committed any illegality or error of facts or law while passing the impugned orders. In the present case, the recovery of 38 bottles (750 ml each) has been effected. Sub-section (2) of Section 78 of the Act specifically provides that in case, the quantity of liquor found at the time or in the course of detection of such offence exceeds twenty-seven bulk liters 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 is estimated by the Magistrate.

Considering the existing value of the truck, manufactured in the year 1986, this Court deems it fit and appropriate to direct the petitioner to furnish bank guarantee to the tune of Rs.1,50,000/-, instead of Rs.8 lakh as imposed by the trial Court, for getting his vehicle released on *superdari*. The petitioner shall hand over the registration certificate of the vehicle alongwith an undertaking that he will not sell the vehicle in question and

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will not create any encumbrance over the vehicle during the pendency of the trial.

With the aforesaid modification, the present petition is disposed of.

12.08.2021

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No