

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(119)

CRM-M-30659-2021
Date of decision: 03.08.2021

Sombir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. S.S.Momi, Advocate
for the petitioner.

SUVIR SEHGAL, J. (Oral)

The Court has been convened through video conferencing due to Covid-19 pandemic.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking modification of order dated 22.07.2021 (Annexure P-7) passed by the Additional Chief Judicial Magistrate, Narnaul in case FIR No.92 dated 31.03.2021 registered for offence under Sections 379, 120-B of the Indian Penal Code, 1860 and 4(1), 4(1-A) of The Mines and Minerals (Development and Regulation) Act, 1957, at Police Station – Sadar Narnaul, District Mahendergarh (Haryana) in so far as the trial Court has directed the deposit of 20% of penalty amount (i.e. 20% of Rs.16,25,000/-) and furnishing of superdginama to the tune of Rs.30 lacs with one surety in the like amount.

Counsel for the petitioner submits that the FIR (Annexure P-5) has been registered despite the fact that there was a valid e-Rawana issued for truck bearing No. RJ-18-GB-7271 by the Department of Mines and Geology, Government of Rajasthan, when the truck was stopped for checking by the officials of the Mining Department, Haryana. A seizure order dated 06.01.2021 (Annexure P-2) was passed and the possession of the vehicle was taken. The petitioner, being the registered owner, of the vehicle filed an application under Section 451 of the Cr.P.C. for its release on sapurdari, which has been allowed by the trial Court vide order dated 26.07.2021 whereby a condition of deposit of 20% of the penalty imposed as well as furnishing of superdginama to the tune of Rs.30 lacs, besides surety has been imposed. Counsel contends that the imposition of condition of cash surety is harsh and the penalty levied upon him, is under challenge in an appeal (Annexure P-3) filed under Rule 109 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012, which is pending. He urges that even the imposition of condition of furnishing of sapurdari bond of Rs.30 lacs is not justified as price of new truck of the same make is in the range of Rs.20-22 lacs.

Notice of motion.

On asking of the Court, Mr. Kuldeep Tiwari, Addl. Advocate General, Haryana accepts notice on behalf of respondent-State. Upon instructions from HC Mukesh, he has opposed the petition and supported the order under challenge. He submits that this is the second default by the petitioner as on an earlier occasion too his vehicle was confiscated since it

was plying without the requisite permission and the offence was compounded.

Having heard counsel for the parties, this Court is of the view that imposing of condition of cash deposit of 20% of the penalty amount is onerous. It has been disapproved of by the Supreme Court in *Keshab Narayan Banerjee and another versus State of Bihar AIR 1985 SC 166* and *Sandeep Jain versus National Capital Territory of Delhi 2002 (2) SCC 66*. Such a condition has been held to be oppressive by different High Courts and it amounts to virtually denial of relief. In so far as the condition of furnishing of sapurdari bond is concerned, suffice is to observe that the requirement of furnishing of bond of Rs.30 lacs is excessive and the same deserves to be suitably reduced, keeping in view the fact that even a new vehicle of the same make, costs lesser than the amount fixed for the bond.

Accordingly, the impugned order dated 22.07.2021 is modified and the vehicle is ordered to be released on sapurdari to the petitioner on his furnishing sapurdari bond of Rs.15 lacs to the satisfaction of the trial Court/Duty Magistrate subject to the condition that the petitioner shall furnish an undertaking to the effect that:-

- “(i). he will preserve the vehicle in the same condition during the pendency of the trial;
- (ii). he will not sell, dispose of, alienate or mortgage etc. the vehicle, during pendency of the trial;
- (iii). he will produce the vehicle before the trial Court as and when directed to do so and;
- (iv). he will ensure that the vehicle is not involved in any other criminal case.

In case of violation of the undertaking by the petitioner, liberty is granted to the prosecution to seek cancellation of the sapurdari bond.

Petition is accordingly disposed of.

(SUVIR SEHGAL)
JUDGE

03.08.2021
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No