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

CRM-M-34364-2021

Date of decision : 03.09.2021

Mohammad Abrar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. S.S. Momi, Advocate with
Mr. Sandeep Sharma, Advocate for the petitioner.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for setting aside the order dated 03.08.2021 (Annexure P-6) passed by the Chief Judicial Magistrate to the extent that while ordering for release of the vehicle in question i.e. Tata Tipper bearing registration No.UP-17T-8450 on superdari, various onerous conditions have been put up on the petitioner including the deposit of 90% of the penalty amount assessed by the Mining Officer as well as to furnish superdarinama in the sum of Rs.25,00,000/- with one surety in the like amount to the satisfaction of the Court.

Learned counsel for the petitioner has submitted that vide impugned order dated 03.08.2021, an application filed by the present petitioner for release of the vehicle in question on superdari was allowed.

However, strict conditions were imposed which are detailed as follows:-

- “(i) That he will furnish superdarinama in sum of Rs. 25,000,00/- with one surety in like amount to the satisfaction of the Court;*
- (ii) That he shall not again use said vehicle in violation of the provisions of MMDR Act and Mining Rules 2012;*
- (iii) That in case he is again found using his said vehicle in violation of aforesaid statutory provisions then the entire superdarinama amount will be forfeited and recovered from the applicant as well as surety;*
- (iv) That he shall deposit 90% of the penalty amount assessed by the Mining Officer, Charkhi Dadri in the Court;*
- (v) That he shall produce his vehicle before the Court as and when directed.*
- (vi) That he will remove excess mineral from his vehicle at his own expenses before its release;*
- (vii) That he shall comply with remaining terms and conditions of superdarinama.”*

Learned counsel for the petitioner has relied upon the judgment dated 03.08.2021 passed by the Coordinate Bench of this Court in **CRM-M-30659-2021, titled Sombir Vs. State of Haryana**, to contend that in a case where 20% of the penalty amount was directed to be deposited alongwith superdginama to the tune of Rs.30,00,000/- with one surety of like amount, the Coordinate Bench of this Court was pleased to modify the said order and had set aside the condition of the deposit of 20% of the penalty amount being onerous and had even reduced the superdari bond from Rs.30,00,000/- to Rs.15,00,000/-, keeping in view the value of the vehicle at the relevant time.

Learned counsel for the petitioner has submitted that as per

averments made in the application (Annexure P-5), the value of the vehicle is Rs.20,00,000/-. It is further submitted that his statutory appeal is pending before the Director General, Mining and Geology Department, Haryana and thus, recovery of the penalty amount as well as the other onerous conditions would prejudice his right in the abovesaid statutory appeal.

Notice of motion.

On advance notice, Mr. Manish Dadwal, AAG, Haryana, appears and accepts notice on behalf of the respondent and has opposed the present petition. It has been stated that in the present case, as per the seizure memo, applicant was carrying around 30 metric ton minerals in excess of the limit mentioned in E-transit bill. It is further submitted that it is within the jurisdiction of the learned Chief Judicial Magistrate to impose such conditions as it deems appropriate in view of the judgment passed by the Coordinate Bench of this Court in **M/s K.C. Stone Crushing Co. and others Versus State of Haryana and others**, reported as **2021(2) RCR (Criminal) 469**.

In rebuttal to the said argument, learned counsel for the petitioner has submitted that although, he will remove the excess minerals and he will bear the expenses for removing the same but he will not claim any right on the excess minerals and has further stated that he will furnish superdginama in the sum of Rs.25,00,000/- with one surety in the like amount to the satisfaction of the Court, although, as per his version, value of the vehicle is not more than Rs.20,00,000/-.

Learned counsel for the petitioner, however, has vehemently contended that the condition of deposit of 90% of the penalty amount

should be done away with as statutory appeal against the seizure order is pending adjudication. It is further submitted that the petitioner has never been involved in any such incident prior to this and this is the first incident in which the petitioner has been involved. It is also submitted that the vehicle in question is lying with the police since 08.04.2021 and the same is getting deteriorated and is also rusting and the livelihood of the petitioner depends upon the same.

This Court has heard the learned counsel for the parties.

There is no dispute as to the fact that the statutory appeal of the petitioner is pending before the Director General, Mining and Geology Department, Haryana. The fact that he is entitled to superdari cannot be disputed. In fact, the impugned order has held that aspect to be in favour of the petitioner. The judgment in Sombir's case (Supra), in fact, squarely covers the matter in favour of the petitioner inasmuch as the Coordinate Bench of this Court after relying upon the law laid down by the Hon'ble Apex Court in **Keshab Narayan Banerjee and another Vs. State of Bihar, AIR 1985 SC 166** and **Sandeep Jain Versus National Capital Territory of Delhi, 2002(2) SCC 66**, had held that imposing of condition of cash deposit of 20% of the penalty amount was onerous. Relevant portion of the said judgment passed in Sombir's case (Supra) is reproduced hereinbelow:-

“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.

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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.”

Moreover, in the present case, the vehicle in question is in the custody of the police since 08.04.2021 and is susceptible to deterioration and rusting and the fact that the petitioner has not been able to get the same released in spite of the fact that as per his case, it is his only source of livelihood, would also show that the petitioner is finding it extremely difficult to comply with the onerous conditions which have been imposed upon him.

The facts of the present case are on better footing than the facts of the petitioner in the abovesaid case, inasmuch as in the present case, it is the first default of the petitioner whereas in the abovesaid case, it is the second default of the petitioner. Further, penalty imposed in the abovesaid case was 20% whereas condition imposed in the present case is to deposit 90% of the penalty amount assessed by the Mining Officer. Further in the

abovesaid case, even superdari bond was reduced from Rs.30,00,000/- to Rs.15,00,000/- whereas in the present case, learned counsel for the petitioner has fairly stated that he would comply with the condition of furnishing superdginama in the sum of Rs.25,00,000/- with one surety in the like amount to the satisfaction of the Court, although, as per his version, value of the vehicle in question is not more than Rs.20,00,000/-. Additionally, the petitioner has also undertaken to remove the excess minerals from the vehicle at his own expenses but is giving up the claim on the said alleged excess minerals.

Accordingly, keeping in view the abovesaid facts and circumstances as well as the legal aspect, this Court finds that the condition imposed with respect to cash deposit of 90% of the penalty amount is onerous and the impugned order dated 03.08.2021 passed by the Chief Judicial Magistrate is accordingly modified and the vehicle in question is ordered to be released on superdari to the petitioner on the following conditions:-

- (i) That he will furnish superdarinama in sum of Rs. 25,000,00/- with one surety in like amount to the satisfaction of the Court;
- (ii) That he shall not again use the said vehicle in violation of the provisions of MMDR Act and Mining Rules 2012;
- (iii) That in case he is again found using his said vehicle in violation of aforesaid statutory provisions, then the entire superdarinama amount will be forfeited and recovered from the applicant as well as surety;
- iv) That he shall produce his vehicle before the Court as and when directed.

- v) That the petitioner would remove the alleged excess minerals from his vehicle at his own expenses but however would not claim any right for the said excess minerals during the pendency of the statutory appeal and right to the said excess minerals would be dependent upon the final order passed in the said appeal
- vi) That he shall comply with remaining terms and conditions of superdarinama.

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 in the abovesaid terms.

03.09.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No