

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

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CRM-M-40113-2021

Date of Decision : November 24, 2021

SEWAK SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Deepak Goyal, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

The present petition is filed under Section 482 Cr.P.C. for quashing of order dated 3.9.2021 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Sunam whereby orders have been issued to deposit an amount of Rs.3 lacs in the form of cash security or a bank guarantee for release of vehicle bearing registration No. DL4CNB-5962 on Sapurdari in case FIR No. 84 dated 28.4.2021 under Sections 61/69/78/1/14 of Excise Act registered at Police Station Dirba, District Sangrur.

It has been submitted by the learned counsel for the petitioner that vide impugned order while disposing of the application for release of vehicle on Sapurdari, the learned Judicial Magistrate 1st Class, Sunam has directed that keeping in view the provisions of Section 78 of Punjab Excise Act, 1914, the vehicle is ordered to be released on

Supardari on deposit of security to the tune of Rs.3 lacs in the form of cash security or a bank guarantee subject to the conditions stated in para No.5 of the order. The learned counsel for the petitioner has submitted that the petitioner is facing hardship especially due to the Covid-19 pandemic and instead of an equivalent value of the vehicle, the learned trial Court may be directed to take part of the same which may be upto 20% of the amount and has prayed that the order passed by the learned Judicial Magistrate 1st Class, Sunam be modified. He further submitted that the aforesaid Section 78 of Punjab Excise Act, 1914 which was amended by way of second amendment of 2017 is also under reconsideration by the Government for long time and has relied upon the judgment of a Division Bench of this Court passed in **Darshan Singh Vs. State of Punjab**, CWP No.24941 of 2019 decided on 28.1.2020 whereby this fact has been recorded that the State is reconsidering its stand with regard to the aforesaid amendment. He submitted that the Division Bench of this Court had directed in that case that the Sapurdari be given on the deposit of 20% of the assessed amount.

On the last date of hearing, this Court had put a query to the the learned State counsel as to whether the aforesaid amendment has been reconsidered or withdrawn by the State or not and the learned State counsel had sought time to seek instructions as to whether notification dated 15.12.2017 is still in operation or not.

Today, Ms. Bhavna Gupta, learned DAG, Punjab has submitted on instructions from Excise Inspector Baldev Singh that the aforesaid notification dated 15.12.2017 is still in operation and it has

neither been repealed nor modified. The learned State counsel further submitted that once a Legislation provides for strict provision that when in such like cases the vehicle is to be released on Sapurdari then it can be released only on the submission of security in the form of a cash or a bank guarantee or of an equivalent to the amount of the vehicle thereof and, therefore, no departure can be made from the aforesaid strict provision. She further submitted that the judgment passed by the Hon'ble Division Bench of this Court was on the facts of that case and there is no declaration of law in that regard and, therefore, the petitioner cannot be permitted to take the benefit of the same. She further submitted that a Legislation is presumed to be constitutionally valid till the time it is set-aside by a competent Court or it has been withdrawn/repealed by a Legislation. She submitted that such like provisions in the Legislation are to be literally continued and unless there is an express provision for departure, the same should be strictly adhered to.

I have heard the learned counsels for the parties.

The learned Judicial Magistrate 1st Class, Sunam while granting the Sapurdari had ordered the release of the vehicle subject to the deposit of security to the tune of Rs.3 lacs in the form of cash security or a bank guarantee in accordance with the provisions of Section 78 of Punjab Excise Act, 1914 which are still in operation according to the learned State counsel. The judgment of a Division Bench of this Court relied upon by learned counsel for the petitioner would not be applicable to the present case as that case was decided on the facts and circumstances of that case only and there was no declaration of law to the

effect that only 20% security is to be deposited. In the absence of any express provisions for making an exception or a departure from the statutory provisions, no relaxation can be granted to the petitioner.

In view of the above, the petition being devoid of any merit is, hereby, dismissed.

November 24, 2021

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No