

CRM-M-40542-2021 (O&M)

Date of Decision : October 13, 2021

Ravinder Kumar

....Petitioner

Versus

State of Haryana

... ..Respondent

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent : Mr. Sanchit Punia, Advocate
for the petitioner..

Mr. Deepak Grewal, DAG, Haryana.

Arvind Singh Sangwan, J.

Prayer in this petition is for quashing/setting aside the order dated 2.9.2021 passed by the Additional Sessions Judge, Yamuna Nagar vide which the application for releasing the vehicle Tata Ace bearing registration No.HR-58-A-3490 on Superdari in case FIR No.149 dated 22.5.2021 under Section 13(1)(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (for short 'the Act'), registered at Police Station Partap Nagar, Distirct Yamuna Nagar has been dismissed.

Brief facts of the case are that on the basis of secret information that the petitioner is indulged in the transportation of cows and supplying the same to one Sajid. On the basis of statement of complainant Anand Sharma, a member of Gau Raksha Dal, the aforesaid FIR has been registered and the Tata Ace vehicle bearing registration No. HR-58-A-3490, in which one cow was found, also taken into possession by the police.

The petitioner moved an application before the trial Court for releasing the aforesaid vehicle on Superdari. The trial Court gave a notice to the Investigating Officer of the concerned Police Station and in the police report it was admitted that the vehicle was taken into possession in the aforesaid FIR but the release of the same on Superdari was objected on the ground that the confiscation proceedings regarding the vehicle are pending before the Sub Divisional Magistrate (Civil), Bilaspur as Section 17 of the Act provides a separate procedure for releasing of the vehicle seized under the Act.

The trial Court vide impugned order dated 2.9.2021 dismissed the application mainly on the ground that the separate proceedings under Section 17 of the Act are pending before the Sub Divisional Magistrate, Bilaspur and, therefore, the vehicle cannot be released on Superdari.

Counsel for the petitioner has further submitted that the vehicle in dispute is the only source of income of the petitioner and the same is lying unused in the Police Station and with the passage of time, it will outlive its life and utility. Counsel for the petitioner next argued that the vehicle in dispute is a commercial vehicle which has been purchased by the petitioner by raising a loan and the petitioner cannot pay the loan unless he ply the same for the purpose of earning his livelihood.

Counsel for the petitioner has relied upon the order dated 4.2.2020 passed in CRM-M-12420-2016, wherein the following observations has been made :-

“Learned counsel has relied upon an order dated 08.08.2017 passed in CRM-M-28724-2017

(Harpal Singh Vs. State of Haryana), where the following observations have been made: -

“Learned counsel for the petitioner contends that Amendment of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter referred to as “the Act”), is in process and in a similar case, a co-ordinate Bench of this Court by the order dated 16.01.2017 passed in CRM No. M- 37389 of 2016 titled as **“Isran v. State of Haryana”** had also directed the release of vehicle of the petitioner therein subject to the satisfaction of trial Court.

In support of his submissions, he has also placed reliance upon the judgment of Division Bench of this Court in the case of **“Mainpal v. State of Haryana and others”** CWP No.19153 of 2016 decided on 30.05.2017.

Learned State counsel does not controvert the submissions made by learned counsel for the petitioner and states that the amendment of the Act is under process.

Consequently, the petition is allowed and the impugned orders dated 06.03.2017 (Annexure P-4) and 21.04.2017 (Annexure P-6) are set-aside. The vehicle i.e truck bearing registration No. HR99YV(T)1534 shall be released on superdari subject to the satisfaction of trial Court/Duty Magistrate.”

Similar orders have been passed in CRM-M-3881-2017 (**Kulwinder Singh Vs. State of Haryana**), in which vide order dated 31.05.2017, the vehicle was ordered to be released and in (**Isran Vs. State of Haryana**) vide order dated 16.01.2016, vehicle had been ordered to be released on Superdari.

In reply, learned State counsel has submitted that the revisional Court had passed the order, considering the fact that the vehicle was not confiscated under Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015.”

Counsel for the petitioner has further submitted that it will be a matter of trial whether the FIR was registered by an officer not below the rank of Sub Inspector and the confiscation made by an officer not competent to do so is maintainable.

Reply by way of affidavit of the Deputy Superintendent of Police, Bilaspur is on record and the learned State counsel, on the basis of the same, has submitted that since the vehicle has been seized under the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, the same cannot be released as per the Section 17 of the Act. It is also submitted that as per Section 17 of the Act, the Sub Divisional Magistrate, Bilaspur is competent to decide whether the vehicle is to be seized or released and a request already made by the police, in this regard, is pending.

After hearing counsel for the parties and considering the facts and circumstances of the case, I find merit in the present petition and the same is allowed and the impugned order dated 2.9.2021 passed by the

Additional Sessions Judge, Yamuna Nagar is set aside. The vehicle, in question, be released on Superdari in favour of the registered owner on furnishing Superdari bonds, subject to the satisfaction of the trial Court/Duty Magistrate/Sub Divisional Judicial Magistrate, concerned.

The present petition stands disposed of.

October 13, 2021
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO