

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

(248)

CRM-M-4134-2022

Date of decision : 15.03.2022

Sanjay Kumar

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Inder Jeet Singh, Advocate, for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

The present petition raises a challenge to the order dated 16.09.2021 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Samana in the case titled State Vs. Sanjay Kumar arising out of the FIR No.297 dated 11.07.2021 registered at Police Station Patran Under Section 6-1-14 & 78(2) Excise Act to the extent whereby, the Judicial Magistrate, while ordering the release of the Jeep bearing registration No. HR-51-AZ-7128 on *Superdari*, has directed the petitioner to furnish bank guarantee in the sum of Rs. 5 Lakhs with one surety of like amount.

Counsel for the petitioner *inter alia* submits that the condition imposed by the Judicial Magistrate 1st Class for release of the vehicle on *Superdari* is excessively harsh against the petitioner and that it is not possible for him to arrange for the bank guarantee as he is a farmer and

cannot arrange for funds to secure issuance of bank guarantee. He has contended that the petitioner is owner of 35 Kanal 14 Marla of agricultural land out of total of 71 Kanal 9 Marla situated in Village Barata in District Kaithal as per jamabandi for the year 2020-21 which is attached as Annexure P-2. It is submitted that the market value of the said land, as per the prevailing collector rates, is Rs.50 Lakhs and that he is ready and willing to furnish the above mentioned land as security for release of the vehicle on *Superdari*.

A reply on behalf of the State has been filed by way of an affidavit of Rachhpal Singh, PPS, Deputy Superintendent of Police, Patran, District Patiala. He has defended the order as having been passed correctly and that there is no illegality or perversity in the said order.

I have heard learned counsel for the parties and have gone through the record.

Even though, the discretion is vested with the Judicial Magistrate to prescribe such conditions for release of a vehicle on *Superdari*, as are just and appropriate to his satisfaction, however, it cannot not be lost sight of the fact that the condition for release so prescribed should not be made so onerous as to render the order ineffective and in-operative. Once the Judicial Magistrate had directed release of the vehicle on *Superdari* in favour of the petitioner, it would have been appropriate that the conditions so prescribed should be reasonable so as to afford a real opportunity to the beneficiary to avail benefit of the order of release.

Hence, in the given circumstances, I am of the opinion that the mandate against the petitioner to submit a bank guarantee of Rs. 5 Lakhs with a surety of the like amount is harsh and onerous, in the facts and circumstances of the instant case. The impugned order passed by the Judicial Magistrate 1st Class, Samana, is thus modified only to the extent that the vehicle may be released on *Superdari* in favour of the petitioner subject to his furnishing security/surety in a form other than bank guarantee and including in the form of title documents pertaining to the land for seeking release of the vehicle. The order of Judicial Magistrate 1st Class, Samana dated 16.09.2021 is modified to the said extent.

The instant petition is disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

15.03.2022
anil

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>