

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

CRM-M-3396-2020 (O & M)

Date of decision: 20.07.2022

Karaj Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amit Arora, Advocate, for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 06.01.2020 passed by the Additional Sessions Judge-cum-Judge, Special Court, Tarn Taran (Annexure P-4) vide which the application for release of a Maruti Swift Car bearing registration No.PB-46-AC-3562 on superdari stands dismissed in a case bearing FIR No.118 dated 25.07.2019 registered under Sections 18/29 NDPS Act with Police Station Sadar Patti, District Tarn Taran.

2. The brief facts of the case are that the petitioner purchased the vehicle i.e. Maruti Swift Car bearing registration No.PB-46-AC-3562 from its registered owner Kuldeep Singh son of Dara Singh resident of Village Dall, Tehsil Patti, District Tarn Taran vide sale agreement/affidavit dated 26.06.2019 (Annexure P-1).

3. Before the registration of the aforementioned vehicle could have got transferred in the name of the petitioner, his brother Gurcharan

Singh was apprehended by the police in FIR No. 118 dated 25.07.2019 registered under Sections 18/29 NDPS Act with Police Station Sadar Patti, District Tarn Taran, with the allegations that he was driving the aforesaid vehicle alongwith his co-accused Rohit Kataria and recovery of 02 kg 500 grams opium is said to have been effected. A copy of the aforesaid FIR is (Annexure P-2).

4. The vehicle, in question, was impounded by the Tarn Taran police in the abovementioned case and is lying in the said police station for the last almost three years.

5. The petitioner moved an application before the Trial Court giving all the aforementioned facts but the Trial Court dismissed the application filed by the petitioner for release of the abovementioned vehicle vide order dated 06.01.2020 (Annexure P-4). It is this order, which is impugned in this petition.

6. The learned counsel for the respondent-State has filed a reply dated 16.03.2020 by way of affidavit of Kanwalpreet Singh, PPS, Deputy Superintendent of Police, Sub Division Patti, District Tarn Taran. As per the said reply, it is admitted that the petitioner had purchased the vehicle from Kuldeep Singh son of Dara Singh, who could not get the same transferred to his name. The petitioner had allowed his brother Gurcharan Singh to use the vehicle without the knowledge that Gurcharan Singh would use it in the transportation of the opium, and therefore, it is admitted by the state that the petitioner was having no role with respect to the FIR No.118 dated 25.07.2019 registered under Sections 18/29 NDPS Act with Police Station Sadar Patti, District Tarn Taran. In fact, a report under Section 173 Cr.P.C. has been submitted against Rohit Kataria @ Bablu and Gurcharan Singh (the brother of the present petitioner).

7. The learned counsel for the petitioner contends that the order, Annexure P-4 is passed in an illegal and arbitrary manner. In fact, it is a mechanical order without appreciating the facts of the case. He contends that once the petitioner was admittedly not an accused in the FIR in question, the vehicle ought to have been released to him and the recording of the finding in the impugned order that the petitioner could possibly use the said vehicle for the same purpose, if it was released to him, is completely fallacious as the petitioner was not an accused first-time around. He while relying on the judgment of ***“Sunderbhai Ambalal Desai versus State of Gujarat, AIR 2003 SC 638***, further contends that no purpose would be served by keeping such vehicles at the police station for long and they ought to be released on superdari with the assurance that the same shall be produced before the appropriate Court/authority, if so required.

8. The learned counsel for the State while relying upon the reply dated 16.03.2020, has not disputed the factual assertions made in the petition. He fairly contends that this Court could allow the petition and release the vehicle in question on superdari to the petitioner and an appropriate direction be issued to the petitioner that he would not sell or transfer the vehicle in question to any other person and produce the same before the Court/Appropriate Authority whenever required to do so till the trial in FIR No. 118 dated 25.07.2019 is pending.

9. I have heard the learned counsel for both the parties.

10. Admittedly, the petitioner is not an accused in the aforementioned FIR. Even the learned counsel for the State has admitted that the vehicle in question had been borrowed by Gurcharan Singh, brother of the present petitioner and the petitioner was not aware that the said vehicle was to be used in the transportation of the opium. Therefore, the

Court could not have come to the conclusion that the petitioner was likely to use the said vehicle for an illegal purpose.

11. In view of the above, the present petition is allowed and the impugned order dated 06.01.2020 (Annexure P-4) is set aside and the vehicle i.e. Maruti Swift Car bearing registration No.PB-46-AC-3562 is ordered to be released on superdari to the petitioner subject to his furnishing necessary bonds/surety to the satisfaction of the concerned Trial Court/Duty Magistrate with the directions that the petitioner shall not sell or transfer or in any other manner alienate the vehicle in question to any other person during the pendency of the trial in the FIR in question. The petitioner is directed to produce the aforesaid vehicle whenever required to do so before the Court/any other Forum.

(JASJIT SINGH BEDI)
JUDGE

July 20, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No