

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 4806 of 2022
Date of Decision: 09.2.2022**

Oshant Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Amandeep Saini, Advocate
for the petitioner.

Mr. Harbir Sandhu, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. Honda Amaza Car bearing registration No. HP-93-5191, is alleged to be carrying illicit liquor. Consequently, FIR No. 119 dated 14.9.2021, constituting therein offence under Section 61/1/14 of the Punjab Excise Act, 1914, is registered, at Police Station Kiratpur Sahib, against the petitioner.

2. However, during the pendency of the trial against the driver of the offending/seized vehicle, an application became moved before the learned Magistrate concerned, by the owner of the above vehicle. Through the above application, the registered owner of the vehicle claimed relief, for release on superdari to him, of the offending/confiscated vehicle, wherein, illicit liquor was allegedly illegally transported. The learned Judicial Magistrate concerned, through an order of 8.10.2021 (Annexure P-4), directed for release of the vehicle to the applicant-petitioner. However, the

order (supra) was made subject to his furnishing superdari bonds in the sum of Rs. 8,00,000/- in the shape of bank guarantee.

4. It appears that the learned Magistrate concerned, laid much emphasis upon the proviso to clause 2 of Section 78 of the Punjab Excise Act, wherein occurs a mandate, that a seized conveyance or the offending conveyance can be released, to the registered owner, hence during pendency of the trial, rather on submission of security in the form of cash or bank guarantee equivalent to the value of conveyance.

5. Though the learned trial Court appears to found its reasoning(s), upon, the afore statutory provision. However, the learend trial Court has not made any endeavour to determine the value of the seized conveyance/offending vehicle. The gross failure on the part of the learned trial Court, to seek a credible valuation along with apposite depreciation, of the seized conveyance/offending vehicle, naturally has resulted in its untenably, hence without any firm evidentiary strata, making an erroneous conclusion that the value of the seized/offending conveyance, is carried in a sum of Rs. 8,00,000/-. Obviously also the learned Magistrate concerned has proceeded to cause hardship, and, has also jeopardised the right(s) of the registered owner concerned, to seek release, on proven valuation along with apposite depreciation, during pendency of the trial, of the offending/seized vehicle.

6. Though for the afore, this Court is constrained to interfere with the above order. However, there is no tangible evidence existing on record of this Court, suggestive that the value of the seized conveyance/offending vehicle, along with the apposite depreciation is much less Rs. 8,00,000/-.

Therefore, it is open to the counsel for the petitioner to produce qua supra

credible evidence before the learned Magistrate concerned, suggestive of the exact value of the offending conveyance/offending conveyance, hence to enable the learned Magistrate concerned, to impose strictly at par with its credible extant valuation, a, valid condition viz-a-viz. the petitioner depositing cash or bank guarantee equivalent to the extant value of the offending/seized conveyance.

7. Consequently, the learned counsel for the petitioner, may file the above credible valuation within two weeks, before the learned Magistrate concerned, and, the latter shall after giving an opportunity of hearing to all the concerned, shall within three weeks thereafter, make a fresh order, in accordance with law, upon, the apposite application.

8. Disposed of.

(SURESHWAR THAKUR)
JUDGE

February 09, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes/No