

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-6214-2022(O&M)

Date of Decision:-31.10.2022

Mukesh Kumar.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. B.K. Bagri, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 482 Cr.PC is for setting aside the order dated 31.08.2021 passed by the Additional Sessions Judge, Rohtak in CRM No.236 of 2021 titled as Mukesh Vs. State of Haryana vide which the application under Section 451 of Cr.PC for release of the vehicle bearing Registration No.HR-12U-7458 on superdari has been dismissed and with a consequent prayer to direct the release of the vehicle to the petitioner on superdari.

The brief facts of the case are that the petitioner is posted with the Indian Railways as a TTE at Marwar Junction (Rajasthan). Since he was a sportsman, he came to Rohtak to practice at Jat College Akhara, Rohtak. While proceeding back to Marwar Junction on 16.01.2021, he parked his Swift Car bearing registration number HR-12U-7458 and handed over the keys of the same to Sukhwinder Coach at Jat College Akhara, Rohtak.

Subsequently he came to know that the said car was used by Sukhwinder accused on the date of incident i.e. 12.02.2021 in which 06 persons were killed and FIR No.49 dated 12.02.2021 was registered at P.S.

PGIMS, Rohtak against Sukhwinder Coach and his friend. The copy of the FIR is attached with the petition as Annexure P-3.

A notice was served upon the petitioner under Section 133 of the Motor Vehicles Act, 1988. In response there to, the petitioner informed the investigating officer as to how the vehicle came into the possession of Sukhwinder Coach. The copy of the notice and reply dated 2.3.2021 is attached as Annexure P-4 to the petitioner. After the conclusion of the investigation the report under Section 173 Cr.PC was presented against Sukhwinder and one Manoj Kumar. The petitioner was cited as a witness at Sr. No.16 of the list of witnesses. Pursuant thereto two accused were chargesheeted vide order dated 11.11.2021 (Annexure P-5).

Despite being a prosecution witness and not an accused, the application moved by the petitioner for release of the vehicle on superdari was dismissed by the court of Additional Sessions Judge, Rohtak vide impugned order dated 31.08.2021.

The Counsel for the petitioner contends that in terms of judgment in *Sunder Bhai Ambala Desai Vs. State of Gujarat 2003(1) RCR (Criminal) 380* and *Gurbinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492* the vehicle ought to have been released on superdari by way of interim custody since neither the State nor the owner of the vehicle was to be benefitted in any manner, if the vehicle was retained in the premises of the police station. On the other hand the vehicle was likely to remain unattended, the valuable parts of the vehicle were liable to be stolen and the condition of the vehicle was likely to deteriorate. He thus contends that the impugned order be quashed and the vehicle be handed over/released to him on imposition of appropriate conditions.

The Counsel for the State on the other hand while referring to the reply dated 30.10.2022 states that the vehicle had been handed over to Sukhwinder Coach by the petitioner who had committed the offence in question. Since 05 murders had been committed and the vehicle had been used by the accused for a heinous crime, then there was an apprehension that if the vehicle was released on superdari, the vehicle could be tampered with. It is however, admitted by the Counsel for the State that the petitioner was asked to join investigation and he did so and that the name of the petitioner figures in the list of witnesses.

I have heard learned Counsel for the parties at length.

In ***Sunder Bhai Ambala Desai's case (supra)*** the Hon'ble Supreme Court has held as under:-

“ 15. *Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.*

16. *However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.*

17. ***In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.***

18. *In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.*

19. *For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.*

20. *Similarly for the Narcotic drugs also, for its identification,*

procedure under Section 451 Criminal Procedure Code, 1973 should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Criminal Procedure Code, 1973 are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court regard to such articles are implemented properly.

Adjourned for three weeks.

Order accordingly.

The aforesaid judgment has been followed by this Court in ***Gurbinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492 .***

In view of the aforementioned judgments it is apparent that if the vehicle remains parked in the police station for a considerable period of time, it would become unfit for being plying on the road as keeping it parked in the sun and rain could damage its tyres, colour, machinery, battery as also interiors of the vehicle. The value of the vehicle would also diminish in such a situation.

Thus the present petition is allowed. The vehicle bearing registration No.HR-12U-7458 is ordered to be released to the petitioner/registered owner on superdari on general terms and conditions subject to the petitioner/registered owner executing personal bonds in the sum of Rs.4 lakh with one surety of the like amount to the satisfaction of the CJM/Duty Magistrate with an undertaking that as and when the Trial Court would require the said vehicle, he would produce the same before it at his own cost. He shall also not sell, transfer or alter the physical condition of the vehicle in any manner. Though he is not an accused in the instant FIR, nevertheless he shall also furnish an undertaking that he will not use or permit its use for commission of any offence and in case of involvement of

the petitioner or the aforementioned vehicle in any case it would be open to the prosecution to move an application for cancellation of the order releasing the vehicle on superdari.

Disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

October 31, 2022

Vinay

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