

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

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CRM-M-13819-2022

Date of Decision: 27.09.2022

Naveen Garg

...Petitioner

Versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Rahul Vats, Advocate, for the petitioner.

Mr. Krishan K. Chahar, Addl. AG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 17.03.2022 (Annexure P-1) vide which an application filed by him seeking release of Maruti Baleno car bearing registration No.HR-08-AC-1726 on superdari has been dismissed.
2. A few facts necessary to notice for disposal of the instant petition are that the petitioner is arrayed as an accused in case FIR No.71 dated 14.02.2022 registered at Police Station Pehowa, District Kurukshetra, under Section 18 of the NDPS Act, wherein the allegations are broadly to the effect that on 14.02.2022, the petitioner alongwith one Navdeep @ Monu was found in possession of 1.5 kgs. of opium while they were travelling in the car in question. After conducting investigation, challan was presented against the accused in the Court of Additional Sessions Judge, Kuruskhshetra. The petitioner otherwise was granted regular bail vide order dated 15.03.2022 (Annexure P-3).

3. Since when the petitioner was apprehended by the police on 14.02.2022 and the vehicle in question had also been taken into possession by the police, the petitioner moved an application seeking release of the said vehicle on superdari on 14.03.2022, which was dismissed by the trial Court vide order dated 17.03.2022 (Annexure P-1), which has been impugned by way of instant petition.
4. Learned counsel for the petitioner has stated at the Bar that in the present case, an incomplete challan was presented before the trial Court on 02.09.2022, which was not accompanied by report of the FSL and that now the matter is fixed for 19.10.2022 before the trial Court so as to await the report of the FSL and that even the charges have not been framed so far.
5. While addressing arguments, learned counsel for the petitioner has submitted that the trial Court fell in error in dismissing the application by observing that since the petitioner himself is the owner of the vehicle in question and was travelling in the said vehicle when the contraband was recovered from the same, therefore, he has to be attributed the knowledge regarding the presence of contraband in the vehicle and as such, the same is liable to be confiscated and could not be released on superdari. It has been submitted that since in the present case even the charges have not been framed so far and that even in case the same are framed, it would be a matter of trial as to whether the petitioner can be held guilty or not, therefore, the vehicle in question cannot be detained by the police indefinitely at this stage, as its disuse is bound to deteriorate its condition.

6. On the other hand, learned State counsel while filing reply has submitted that since the petitioner himself is the owner of the vehicle in question, which was being used for commission of offence, he cannot feign ignorance about presence of contraband in his vehicle. It has further been submitted that there is every likelihood that in case the said vehicle is released on superdari, the same could be used again for commission of identical offences by the petitioner or by someone else and thus, the same ought not to be released on superdari.
7. This Court has considered rival submissions.
8. It is no doubt correct that a vehicle found to be used for commission of offence under the NDPS Act is liable to be confiscated in terms of provisions of Section 61 of the NDPS Act. However, it is only after it is held by the Court concerned that the vehicle has been used, that the same could be confiscated. Though an enquiry is required to be held as to whether the same was being used in a commission of offence with the knowledge and consent of the owner, as is envisaged under Section 63 of the NDPS Act, but in case the accused himself is the owner, no such proceedings are required to be conducted. However, all said and done, since in the instant case even the charges have not been framed till date, much less any finding as regards guilt of the petitioner, the vehicle in question is certainly required to be released to the petitioner on superdari as in case the same is kept in the police station or is kept detained by the police, its condition is likely to deteriorate on account of its disuse and on account of vagaries of weather, which would not be in the interest of anybody, as unnecessarily the value of the vehicle in question get

- diminished. The impugned order, as such, cannot sustain and is hereby set aside. The vehicle in question is ordered to be released on superdari subject to the petitioner furnishing adequate superdari bond/undertaking etc. to the satisfaction of the trial Court.
9. The trial Court would be at liberty to impose any such condition as deemed appropriate so as to ensure that the vehicle is duly produced before the trial Court as and when required.
10. The petition stands accepted in the above mentioned terms.

27.09.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

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