

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

**CRM-M-13898 of 2022(O&M)
Date of Decision: April 01, 2022**

Sharafat Ali @ Sharafat Khan

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Manoj Kumar Sood, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

The petitioner is an accused in case FIR No.43 dated 30.01.2022 under Sections 279, 304-A IPC registered at P.S. Sadar Ballabgarh, Faridabad. He has filed this petition praying for modification of order dated 04.02.2022 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Faridabad vide which the application of petitioner for release of the Tractor on *superdari* has been allowed subject to furnishing security in the form of cash security or bank guarantee of Rs.6,00,000/- (which is the value of the vehicle).

Reliance was placed by the learned trial Court on the third proviso to sub-section (2) of Section 78 of Punjab Excise Act, 1914 which is as under :

'Provided further that during pendency of trial, conveyance shall only be released on submission of security (in form of cash security or bank guarantee) equivalent to the value of the conveyance thereof'.

The learned trial Court held that in view of that proviso, there

was no option to release the vehicle without getting cash security or bank guarantee equivalent to the amount of conveyance.

Learned counsel for petitioner has argued that the condition imposed by the trial Court is onerous. He states that the petitioner is not in a position to furnish cash security and bank guarantee as directed. He states that the tractor trolley is the only source of his livelihood and if it is not released on superdari, he and his family will have no means of survival and would virtually have to suffer. He has relied on the decision of this Court dated 28.1.2020 in CWP-24941-2019 titled as 'Darshan Singh Versus State of Punjab'. In that petition, the challenge had been raised to the third proviso to sub-section 2 of Section 78 of Punjab Excise Act, 1914 which has been introduced as Punjab Excise (Second Amendment) Act, 2017 whereby the confiscated vehicle could be released only on submission of security in the form of cash security or bank guarantee equivalent to value of conveyance sought to be released.

In the course of proceeding in that petition, learned counsel appearing for State had stated that the State was considering amending the aforesaid provision. The petition was disposed of by directing to release the vehicle on superdari on the condition that petitioner would deposit 20 per cent of the assessed amount in cash and give security for the remaining amount alongwith other conditions which may be imposed by the Court. The Court also expressed the hope that the State would take expeditious decision in terms of their stand that the provision would be re-considered.

Learned counsel for the petitioner submits that the petitioner shall provide as security the original property papers including sale deed of H.No.463, Sector 23, Faridabad, which is registered in the name of his

father with an undertaking that he shall remain bound by the conditions to be imposed by learned trial Court. The father of the petitioner will also file a similar undertaking.

Accordingly, the order dated 04.02.2022 is modified and it is directed that instead of furnishing the cash security or bank guarantee of Rs. 6,00,000/-, the petitioner shall provide the house aforesaid as security. Both the petitioner and his father shall separately file appropriate undertaking/affidavits. In addition, the petitioner shall also furnish an undertaking before the trial Court to the effect that henceforth, the vehicle will not be used for any criminal activity. It is made clear that in case, the petitioner violates any of the conditions, it shall be open to the prosecution to seek cancellation of the *superdari* bonds.

Disposed of accordingly.

April 01, 2022

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No