

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(275)

CRM-M-40196-2022

Date of decision: - 11.10.2022

Sukhwinder Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Munish Raj Chaudhary, Advocate,
for the petitioner.

Mr. Iqbal S. Mann, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. for modification of order dated 22.08.2022 (Annexure P-2) passed by the Sub-Divisional Judicial Magistrate, Khanna in FIR No.114 dated 25.07.2022, registered under Section 61 of the Punjab Excise Act, 1914, at Police Station Khanna City-2, District Khanna, vide which an application for release of vehicle bearing registration No.PB-13-BD-7826, make Swift white colour on superdari, has been allowed by imposing conditions upon the petitioner and subject to his furnishing security in form of cash security or bank guarantee of Rs.3,00,000/- .

2. Learned counsel for the petitioner has submitted that the petitioner has been involved in the above-said FIR as he is the owner of car in question and even the SHO had submitted a report to the effect that

they have no objection in case the vehicle is released to the owner. It is further submitted that a very onerous condition has been imposed for the release of the said car as the security which has been sought is in the form of cash security or bank guarantee equivalent to the value of the conveyance thereof. It is stated that in similar circumstances, a Co-ordinate Bench of this Court in ***CRM-M-17207-2022*** titled as ***“Amandeep Singh Vs. State of Punjab”***, ***decided on 26.04.2022***, after considering the provisions of Sections 78(2) of the Punjab Excise Act, 1914 and after relying upon a judgment of Division Bench of this Court in case ***CWP-24941-2019*** titled as ***“Darshan Singh Vs. State of Punjab”***, ***dated 28.01.2020***, modified the order and had directed that instead of furnishing the cash security or bank guarantee of Rs.2,00,000/-, the petitioner shall furnish a solvent surety of the like amount in question. Reliance has been placed upon the judgment of the Division Bench of this Court in ***Darshan Singh's case (supra)***, where after considering the stand of the respondent-State, the Division Bench was pleased to release the vehicles in question on superdari on the condition that the petitioners therein would deposit 20% of the assessed amount in cash and give security for the remaining amount. Learned counsel for the petitioner has submitted that the present petitioner is also ready to deposit 20% of the value of the car in question, as assessed in the impugned order in cash and security for the remaining amount and would also comply with the conditions as mentioned in the impugned order. Learned counsel for the petitioner has further submitted that the car in question is in the custody of the police and is depreciating and the same is thus causing irreparable

loss to the petitioner and no purpose would be served by keeping the car in the police custody.

3. Learned State counsel, on the other hand, has opposed the present petition, but has not denied the fact that the SHO had given no objection for the release of the vehicle in question.

4. This Court has heard learned counsel for the parties and has gone through the paper-book.

5. Admittedly, the petitioner is the owner of the vehicle in question as apparent from the impugned order dated 22.08.2022. A further perusal of the impugned order would show that the SHO had submitted a report that they have no objection in case the vehicle in question is released to the present petitioner, who is owner of the said vehicle. The Sub-Divisional Judicial Magistrate, Khanna has been pleased to order the release of the vehicle in question on superdari and the said order has not been challenged by the State of Punjab. The limited challenge of the petitioner in the present case is to the effect that an onerous condition has been imposed upon the petitioner for the release of the said car on superdari vide the impugned order, inasmuch as, he has been directed to furnish the bank guarantee/cash security of Rs.3,00,000/- and it is only the said condition that the petitioner has challenged before this Court. The petitioner is ready to comply with the other conditions imposed therein.

6. A Co-ordinate Bench of this Court in **Amandeep Singh's case (supra)** had allowed the petition in a similar situation. The relevant portion of the said order is reproduced hereunder: -

“Learned counsel for the petitioner submits that the aforesaid condition imposed by the trial Court is onerous. Learned counsel has relied upon the decision of this Court dated 28.01.2020 in CWP-24941-2019 titled as 'Darshan Singh Versus State of Punjab', wherein a challenge was laid 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.

Notice of motion.

Mr. Joginder Pal Ratra, DAG, Punjab, who is also appearing through video conferencing, accepts notice on behalf of the respondent State and could not dispute the factual position, however, it is submitted that under sub-section 2 of Section 78 of Punjab Excise Act, 1914, the trial Court has rightly directed the petitioner to furnish security in the form of cash or bank guarantee.

After hearing learned counsel for the parties, considering the submissions made by learned counsel for the parties and also in view of the judgment relied upon by learned counsel for the petitioner, the order dated 14.02.2022 (Annexure P-2) is modified and it is directed that instead furnishing the cash security or bank guarantee of Rs. 2,00,000/-, the petitioner shall furnish a solvent surety of the like amount.

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. All other conditions imposed by trial Court shall remain unaltered.

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”

A perusal of the order reproduced hereinabove would show that reliance in the said case had been placed upon the judgment of the Division Bench of this Court in **Darshan Singh's case (supra)**. The relevant portion of the judgment of the Division Bench in the said case is

reproduced as under: -

"3. And CWP No.18946 of 2019 has been filed for quashing of the amended proviso to Section 78 (2) of the Punjab Excise Act, 1914 which has been introduced vide the Punjab Excise (Second Amendment) Act, 2017 (Annexure P-1) whereby the security for release of the confiscated conveyance has been restricted to cash security or bank guarantee and for quashing of order dated 18.04.2019 (Annexure P-5) passed by Sh.Amrish Kumar, Sub-Divisional Judicial Magistrate, Jagraon.

4 Today learned State counsel states that he has received instructions that the State is willing to re-consider its stand.

5 Counsel for the petitioner in CWP-18946-2019 points out that while this is a welcome step the fact is that the vehicles have been now retained in the police custody since March, 2013 and July, 2019 respectively and the balance of convenience is in favour of the petitioners and therefore, the vehicles should be released.

6 In the circumstances, we deem it appropriate to order the release of the vehicles on Sapurdari on the condition that the petitioners shall deposit 20% of the assessed amount in cash and give security for the remaining amount along with the other conditions which may have been imposed by the Court to the satisfaction of the Trial Court.

7 In view of the stand of the State it is clear that no useful purpose would be served by keeping these petitions pending. Consequently, the same are disposed of as having been rendered infructuous.

8 It is however hoped that the State would take an expeditious decision on this issue so that more such litigation does not flood the Courts. The issue of vires is kept open.

9 Both the petitions stand disposed of with the above terms. However the issue against vires of the notification is kept open."

7. The Division Bench of this Court, after considering the provisions of Section 78(2) of the Punjab Excise Act, 1914 and also after taking into consideration the stand of the respondent-State therein, was

pleased to order the release of the vehicles on superdari on the condition that the petitioners shall deposit 20% of the assessed amount in cash and give security for the remaining amount, along with the other conditions which had been imposed by the Court to the satisfaction of the trial Court. The case of the petitioner is on a similar footing as the cases in the above-said two judgments and accordingly, the present petition is allowed and the order dated 22.08.2022 is modified to the following extent: -

- (i) The petitioner would deposit 20% of the assessed amount (20% of Rs.3,00,000/- i.e., Rs.60,000/-) in cash and would give security for the remaining amount to the satisfaction of the trial Court.
- (ii) The petitioner shall produce the vehicle in question till the disposal of the instant case.
- (iii) The petitioner shall produce the vehicle in question before the Court on each and every date of hearing.
- (iv) The petitioner would not make any addition or alternation in the vehicle in question and shall keep the same intact till the disposal of the present case.
- (v) The petitioner would give an undertaking to the effect that henceforth, the vehicle in question would not be used for any criminal activity.

8. It is made clear that in case the petitioner violates any of the conditions stipulated hereinabove, it would be open to the prosecution to move an application, in accordance with law.

October 11, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes