

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 119

Criminal Miscellaneous No.M-50645 of 2021
Date of Decision: January 28, 2022

Sher Ali

..... PETITIONER(S)

VERSUS

State of Punjab

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

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PRESENT: - Mr. Manoj R. Sharma, Advocate, for the petitioner.

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Sant Parkash, J

Through the present petition preferred under Section 482 Cr.P.C. for quashing/ modification of order dated 12.02.2020 (Annexure P-2) passed by the Sessions Judge, Pathankot, vide which the revision petition filed by the petitioner against order dated 19.12.2019 passed by the trial court has been dismissed, as also for quashing order dated 19.12.2019 (Annexure P-1) whereby application for releasing Mahindra Bolero Maxi Truck No.PB-35Q-8194 on superdari has been allowed subject to ₹ 3 lac cash security/ bank guarantee alongwith other conditions.

Brief facts of the case are that petitioner was arrayed as accused in FIR No.49 dated 04.08.2019 under Section 61 of Excise Act and he is the registered owner of the aforementioned conveyance from which the

alleged recovery of liquor was effected. During investigation, the said vehicle was taken into police possession. During the pendency of trial, petitioner moved an application for release of Mahindra Bolero Maxi Truck No.PB-35Q-8194 on superdari keeping in view the fact that investigation had already been completed and challan filed. Since the State had got no objection qua said vehicle being released on superdari, the trial court vide order dated 19.12.2019 ordered the release of vehicle on superdari subject to ₹ 3 lac cash security/ bank guarantee alongwith other conditions as enacted vide amendment in Section 78 of Punjab Excise Act vide Punjab Act No.21 of 2017.

The petitioner challenged the aforesaid order of trial court by filing revision application in Sessions Court on the ground that he should not be burdened with cash security/ bank guarantee being from poor background. The revisional court, vide impugned order dated 12.02.2020, dismissed the revision petition and affirmed the order passed by the trial court in view of mandatory conditions as enacted under proviso to Section 78(2) of the Act.

Learned counsel for the petitioner, while relying on the decisions of Co-ordinate Benches of this Court passed in **CRM-M-14229-2020** titled 'Udeek Singh @ Tinku vs. State of Punjab' and **CRM-M-31903-2020** titled 'Karam Sigh vs. State of Haryana' decided on 05.06.2020 and 09.11.2020, respectively, submitted that petitioner is willing to furnish surety amount in the manner as prescribed in the aforesaid judgments. Therefore, it would be in the interest of justice if the impugned order is altered to that extent.

Keeping in view the facts & circumstances as also the legal proposition as mentioned in the above referred decisions of this Court, this Court is of the considered opinion that vehicle of the petitioner be released on superdari on the condition that he shall deposit 20% of the assessed amount in cash and give surety for the remaining amount alongwith other conditions which may have been imposed by the courts below to the satisfaction of the trial court. Order accordingly.

Disposed of with the aforesaid modification in the impugned order(s).

**(Sant Parkash)
Judge**

January 28, 2022
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No