

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

115

CRR-2854-2022

Date of Decision: 19.12.2022

SONU

... Petitioner

VERSUS

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anil Kumar Sharma, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

The instant Revision Petition has been filed for setting aside the impugned order dated 27.09.2022 (Annexure P-2) passed by the Addl. Sessions Judge, Rewari in case FIR No.112 dated 10.04.2021 under Sections 117, 120-B, 379, 413 and 34 of Indian Penal Code; Sections 3 and 4 of Explosive Substance Act and Section 15 of Petr. & Pipe Lines Act, 1962 registered at Police Station Bawal, District Rewari, whereby the application of the petitioner seeking release of his vehicle i.e. truck bearing Registration No.HR-55AF-8997 on superdari has been dismissed.

The brief history of the case is that the above mentioned FIR was registered at the instance of one Mahender Singh, who had made a complaint before the police alleging therein that he works in Datar Security Agency and has been posted as Supervisor. On 09.04.2021, he received an alarm regarding leakage in pipeline No.CH No.KMP 971 the site was visited and inspected by the guards of the above mentioned security agency as well as the officers of the HPCL. On 10.04.2021 at 2.00 AM, the matter was

reported to the Bawal Police Station whereupon SHO inspected the spot, earth was lifted and valves of 2 inch and $\frac{1}{2}$ inch was found attached to the pipeline.

During investigation, the truck, in question was recovered as the same was found loaded with 49 drums of 200 litre capacity, filled with oil. Accordingly, the police took the vehicle as well as the drums in possession being the case property. The petitioner being owner of the truck, in question, moved an application for release of truck on superdari before the Court below, which was dismissed vide order dated 27.09.2022 (Annexure P-2). Resultantly, the petitioner has approached this Court seeking the order dated 27.09.2022 (Annexure P-2) to be set aside and the truck in question to be released on superdari in his favour.

Learned counsel for the petitioner contends that the petitioner is the registered owner of the truck, in question, and has purchased the same by spending his lifelong savings, by raising bank loan. The truck in question is the only source to earn his livelihood. He has to pay the EMIs of the said truck out of his income. He further contends that in case the truck in question is allowed to be kept in the custody of the police, then its condition would be deteriorated day by day and it shall cause harm to the working efficiency also of the truck. The tyres and other internal parts of the truck will get damaged rendering the truck unusable. In that case, the petitioner shall be deprived of the source of earning of his livelihood. He further contends that the petitioner had no knowledge at all about the intention of the driver behind the commissioning of such an offence. There is no fault at all on the part of the petitioner and as such, the petitioner should not be punished by not releasing his truck on superdari.

Notice of motion.

Mr. Chetan Sharma, AAG, Haryana, who is present in Court accepts notice on behalf of the State.

He vehemently argued that the truck in question is involved in the commission of the crime and has been kept in custody being the case property. He further submits that a report was also called from the SHO concerned by the Court below and the SHO concerned has reported that 49 drums (200 litre capacity each) filled with oil were found loaded in the truck in question. The SHO has specifically recommended that the same be not released on superdari till the final conclusion of the trial before the Court below. Even otherwise, in case the truck is released on superdari, then there is every possibility that the same shall not be produced before the trial Court during trial, which may lead to failure of prosecution's case and subsequent acquittal of the accused persons.

I have heard the learned counsel for the respective parties at length and have gone through the material available on record with their able assistance.

The only grievance of the petitioner is that his truck bearing Registration No.HR-55AF-8997 is not being released on superdari by the Court below and the application moved by him in this regard has also been dismissed by the Court below vide order dated 27.09.2022. On the other hand, as per the case of the prosecution, the truck, in question, has been used in the commission of the crime and as such, the same has been taken into police possession. The prosecution has an apprehension that in the absence of the case property, it would not be able to bring home the guilt of the accused and as such, the accused might earn acquittal. The apprehension of the

prosecution is genuine and plausible. Moreover, the exercise with regard to release of any vehicle on superdari is a discretionary power of the trial Court and the High Court should not ordinarily interfere in the same, especially in the absence of any cogent and valid reason. The petitioner has not been able to show any such cogent and valid reason which may inspire confidence in this Court to set aside the impugned order. Mere hardships cannot be construed as proper answer to the question of law. If the truck in question has been used in the commission of offence, which is triable by a Court of Session, the said truck, being a case property and clinching material to prove the case of the prosecution, must remain in police possession, so that the same is produced at the relevant point of time during the trial. Hence, there is no merit in the present petition and the same deserves to be dismissed.

Ordered accordingly.

19.12.2022
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(SANDEEP MOUDGIL)
JUDGE

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