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(276)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2471-2023

Date of Decision: 17.05.2023

YOGESH GROVER

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shadab Ahmed, Advocate for
Mr. Pankaj Garg, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asst. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 31.01.2022 (wrongly mentioned as 30.01.2022 in headnote) passed by the Chief Judicial Magistrate, Mansa in FIR No.150 dated 22.09.2022 under Sections 78 and 61(1) of the Punjab Excise Act, 1914 at Police Station City-I, Mansa whereby the application for Superdari of the car (Verna) registration No.HR-33-B-5444 has been allowed by directing the petitioner to furnish bank guarantee/cash surety in the sum of Rs.2,50,000/- and the order dated 11.11.2022 passed by the Sessions Judge, Mansa whereby the revision petition filed by the petitioner for setting aside the order of the Chief Judicial Magistrate, Mansa dated 31.01.2022 has been dismissed.

2. The brief facts of the case are that an FIR No.150 dated 22.09.2022 under Sections 78 and 61(1) of the Punjab Excise Act, 1914 at

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Police Station City-I, Mansa came to be registered against the petitioner. As per the allegations, 240 bottles of illicit liquor were recovered from the car belonging to the petitioner. A translated copy of the FIR is attached as Annexure P-1 to the petition.

3. During the pendency of the case, the petitioner, who was the registered owner of the vehicle i.e. Verna Car bearing No.HR-33-B-5444 moved an application for Superdari of the aforesaid vehicle before the Trial Court. The said application came to be allowed vide order dated 31.01.2022 by directing the petitioner to furnish a bank guarantee/cash surety in the sum of Rs.2,50,000/- with the following conditions:-

i) That he will produce the vehicle in question in the Court on each and every date of hearing.

ii) That he will not change its colour, structure etc. till the decision of the case.

iii) That he will not sell the same till decision of the case.

A copy of the said order is attached as Annexure P-2 to the petition.

4. Aggrieved by the aforementioned order, the petitioner preferred a revision petition before the Court of Sessions Judge, Mansa but the same came to be dismissed vide order dated 11.11.2022. A copy of the said order is attached as Annexure P-3 to the petition.

5. The aforementioned orders are under challenge in the present petition.

6. The learned counsel for the petitioner contends that in terms of the judgment in **Beant Singh Versus State of Punjab, CRM-M-7999-2022,**

decided on 04.03.2022, the condition imposed upon the petitioner could be modified and instead of directing the petitioner to furnish a bank guarantee/cash surety in the sum of Rs.2,50,000/-, the petitioner may be permitted to submit surety/security of the amount of Rs.2,50,000/- in the form of immovable property.

7. A short reply dated 07.05.2023 by way of an affidavit of Sanjeev Goyal, PPS, Deputy Superintendent of Police, Sub Division Mansa, District Mansa has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that the conditions imposed are in accordance with the third proviso to sub-section 2 of Section 78 of the Punjab Excise Act, 1914 and therefore, the Court had no option to release the petitioner without imposition of the requisite conditions as mentioned in the Excise Act.

8. I have heard the learned counsel for the parties.

9. This Court in the case of **Beant Singh** (supra), held as under:-

“The petitioner is an accused in case FIR No. 7 dated 18.1.2022 registered under Sections 61, 78/1/14 of Punjab Excise Act, 1914 at Police Station Dirba, District Sangrur. He has filed this petition praying for modification of order dated 2.2.2022 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Sunam vide which the application of petitioner for release of Swift car on superdari has been allowed subject to furnishing security in the form of cash security or bank guarantee of Rs. 4,00,000/- (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.

Mr. Nahel, learned counsel for petitioner has argued that the condition imposed by the trial Court is onerous. 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

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expeditious decision in terms of their stand that the provision would be re-considered.

Accordingly, the order dated 2.2.2022 is modified and it is directed that instead of furnishing the cash security or bank guarantee of Rs. 4,00,000/-, 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.”

10. In view of the order passed in **Beant Singh** (supra), the order dated 31.01.2022 is modified and it is directed that the petitioner shall deposit a sum of 20% of the assessed amount in cash and shall furnish a solvent surety for the remaining amount. The rest of the conditions as imposed vide order dated 30.01.2022 shall however remain unaltered.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

17.05.2023

JITESH

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