

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7170-2023

Date of Decision: 21.12.2023

ROHTASH

-Petitioner

Versus

STATE OF HARYANA AND ANR.

-Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Radhe Shyam Sharma, Advocate with
Mr. Mazlish Khan, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J.

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner seeks quashing of the impugned order dated 11.11.2022 (Annexure P-6), whereby, the learned Additional Sessions Judge, Nuh, has directed the petitioner to deposit Rs.67,37,984/- with the mining department concerned, for thereby getting his vehicle released on superdari. In addition, the petitioner also seeks quashing of the impugned order dated 15.10.2022, whereby, the learned Judicial Magistrate Ist Class, Ferozepur, had dismissed his application for releasing his vehicle on superdari, on the ground of maintainability.

2. The brief facts, which are essential for adjudication of the instant petition, are that on 07.09.2022, the vehicle of the petitioner bearing Engine No.84967981 and Chassis No.3146416, upon its being found

indulging in illegal mining, inasmuch as, its being loaded with stone approx. 104 MT, was seized by the officials of the mining department concerned. However, at the time of seizure of the said vehicle, its driver had fled away from the spot. Consequently, FIR No.375 dated 08.09.2022, under Sections 147/149/323/332/353/186/188/379/307/120B of the IPC, and, Section 21(4)(iv)A Mines and Minerals Act, and, Section 5 of Explosive Act, was registered at P.S. Punhana, District Nuh.

3. The impounding of his vehicle caused pain to the petitioner and led him to institute a superdari application, under Section 451 read with Section 457 of the Cr.P.C., before the learned trial Court concerned. However, the said application was dismissed by the learned trial Court, through passing the impugned order dated 15.10.2022, on the ground, that the said application seeking release of vehicle on superdari is not maintainable, as neither any FIR/complaint qua the vehicle in question was lodged, nor any application for its confiscation was filed on behalf of the authorities concerned. Consequently, the lack of any able jurisdiction to release the vehicle on superdari or otherwise, led the learned trial Court concerned to dismiss the said superdari application.

4. Aggrieved by the dismissal order, as made on his superdari application, the petitioner filed a revision against it, under Section 397 of the Cr.P.C., before the learned Additional Sessions Judge, Nuh. The revision was partly allowed by the learned Additional Sessions Judge, Nuh, through passing an order on 11.11.2022. The relevant directions, as carried in the order dated 11.11.2022, are reproduced hereinafter:-

“14. As such in view of aforesaid discussion the present revision is partly allowed with the direction to the revisionist to deposit the amount so assessed, which comes as:-

Reg. No.	Price in Rs. 1/3	Royalty in Rs. 1/3	Penalty in Rs. 1/3	20% NGT compensation 1/3	Grand total in Rs.
Engine No.84967981 Chassis No.3146416	56,09,700/-	9,34,950/-	1,66,667/-	26,667/-	67,37,984/-

As such in this case total Rs.67,37,984/- is ordered to be deposited with the mining department who shall receive the same and issue receipt thereof. Thereupon, learned Illaqa Magistrate upon placing of the copy of the receipt of aforesaid amount shall release the vehicle on furnishing superdaginama to the registered owner. It is pertinent to mention here that both the parties are at liberty to approach the court to pursue their case and in case of their successful proving their case/claim the amount so deposited shall be adjusted/refunded.”

5. However, since the petitioner is yet aggrieved by the order made by the learned Additional Sessions Judge, Nuh, therefore, he has accessed this Court through the present petition.
6. The learned counsel for the petitioner submits that the condition of deposit of penalty, royalty and compensation amount is onerous. He further submits that the vehicle in question has been implicated for the first time ever in any offence and that too, falsely by the officials of the mining department concerned, whereas, it was never involved in any illegal mining, as alleged. To lend vigour to his argument, he has placed reliance upon Annexure P-3, which is an affidavit sworn by one Hamid son of Ilyas, resident of Luhinga Khurd, Tehsil Punhana, District Nuh. The said affidavit discloses that on 07.09.2022, the vehicle in question, which was parked in the house of said Hamid w.e.f. 01.09.2022 to 07.09.2022, was seized by the police officials from his house.
7. The learned counsel for the petitioner submits that since the vehicle in question has been lying with police since 07.09.2022, its

condition is deteriorating every passing day, besides it is getting rusty. The vehicle in question is the sole source of livelihood for the petitioner and his entire family.

8. Per contra, the learned State counsel has filed reply on behalf of the respondent-State, which is taken on record. He has opposed the release of the vehicle in question without depositing the amount of penalty, as imposed by the learned Additional Sessions Judge, Nuh.

9. I have heard the learned counsels for the parties and have scrutinized the entire record.

10. A Co-ordinate Bench of this Court, in case titled “***Sanjay V. State of Haryana***”, CRM-M-36373-2021, while finding the condition qua deposit of 50% of the penalty, royalty and compensation amount for release of vehicle on superdari, as onerous, modified the stringent conditions. The relevant paragraphs of the judgment are extracted hereinafter:-

“There is no dispute as to the fact that the statutory appeal of the petitioner is pending before the Director General, Mining and Geology Department, Haryana. The fact that he is entitled to superdari cannot be disputed. In fact, the impugned order has held that aspect to be in favour of the petitioner. The judgment in Sombir's case (Supra), in fact, squarely covers the matter in favour of the petitioner inasmuch as the Coordinate Bench of this Court after relying upon the law laid down by the Hon'ble Apex Court in Keshab Narayan Banerjee and another Vs. State of Bihar, AIR 1985 SC 166 and Sandeep Jain Versus National Capital Territory of Delhi, 2002(2) SCC 66, had held that imposing of condition of cash deposit of 20% of the penalty amount was onerous. Relevant portion of the said judgment passed in Sombir's case (Supra) is reproduced herein below:-

“Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking modification of order dated 22.07.2021 (Annexure P-7) passed by the

Additional Chief Judicial Magistrate, Narnaul in case FIR No.92 dated 31.03.2021 registered for offence under Sections 379, 120-B of the Indian Penal Code, 1860 and 4 (1), 4(1-A) of The Mines and Minerals (Development and Regulation) Act, 1957, at Police Station – Sadar Narnaul, District Mahendergarh (Haryana) in so far as the trial Court has directed the deposit of 20% of penalty amount (i.e. 20% of Rs.16,25,000/-) and furnishing of superdginama to the tune of Rs.30 lacs with one surety in the like amount.

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Notice of motion.

On asking of the Court, Mr. Kuldeep Tiwari, Addl. Advocate General, Haryana accepts notice on behalf of respondent-State. Upon instructions from HC Mukesh, he has opposed the petition and supported the order under challenge. He submits that this is the second default by the petitioner as on an earlier occasion too his vehicle was confiscated since it was plying without the requisite permission and the offence was compounded.

Having heard counsel for the parties, this Court is of the view that imposing of condition of cash deposit of 20% of the penalty amount is onerous. It has been disapproved of by the Supreme Court in Keshab Narayan Banerjee and another versus State of Bihar AIR 1985 SC 166 and Sandeep Jain versus National Capital Territory of Delhi 2002 (2) SCC 66. Such a condition has been held to be oppressive by different High Courts and it amounts to virtually denial of relief. In so far as the condition of furnishing of sapurdari bond is concerned, suffice is to observe that the requirement of furnishing of bond of Rs.30 lacs is excessive and the same deserves to be suitably reduced, keeping in view the fact that even a new vehicle of the same make, costs lesser than the amount fixed for the bond.

Accordingly, the impugned order dated 22.07.2021 is modified and the vehicle is ordered to be released on sapurdari to the petitioner on his furnishing sapurdari bond of Rs.15 lacs to the satisfaction of the trial Court/Duty

Magistrate subject to the condition that the petitioner shall furnish an undertaking to the effect that:-

“(i). he will preserve the vehicle in the same condition during the pendency of the trial;

(ii). he will not sell, dispose of, alienate or mortgage etc. the vehicle, during pendency of the trial;

(iii). he will produce the vehicle before the trial Court as and when directed to do so and;

(iv). he will ensure that the vehicle is not involved in any other criminal case.

In case of violation of the undertaking by the petitioner, liberty is granted to the prosecution to seek cancellation of the sapurdari bond.

Petition is accordingly disposed of.”

11. Taking into consideration the above legal proposition, as laid down by a Co-ordinate Bench of this Court, and, the submissions made hereinabove, there is no conflict that it was the first default of the petitioner and the condition qua deposit of Rs.67,37,984/- with the mining department concerned, which includes 1/3 price of the vehicle, royalty and penalty, and, 20% NGT compensation, is also onerous, especially when the petitioner has opted to defend the registration of FIR.

12. Consequently, the condition (supra), as imposed upon the petitioner, through the impugned order dated 11.11.2022 (Annexure P-6), is modified, being onerous, and, the vehicle in question is ordered to be released on superdari to the petitioner, on the following conditions:-

(a) That he will furnish a superdarinama in sum of Rs.56,09,700/- with one surety in like amount to the satisfaction of the court;

(b) That he shall not again use the said vehicle in violation of the provisions of MMDR Act and Mining Rules 2012;

(c) That in case he is again found using his said vehicle in violation of aforesaid statutory provisions, then the entire

superdarinama amount will be forfeited and recovered from the applicant as well as surety;

(d) That he shall produce his vehicle before the Court as and when directed;

(e) That he would remove the minerals, if any, from his vehicle at his own expenses, however, would not claim any right for the said minerals during the pendency of the statutory appeal and right to the said excess minerals would be dependent upon the final order passed in the said appeal;

(f) That he shall comply with remaining terms and conditions of superdarinama.

13. In case of violation of the undertaking by the petitioner, liberty is granted to the prosecution to seek cancellation of the superdari bond.

14. The petition is disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

21.12.2023
devinder

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