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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM M-8240-2023

Date of Decision: February 17, 2023

Jaswinder Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

-. -

Present:- Mr. Anil Kumar Spehia, Advocate for the petitioner.

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HARKESH MANUJA (ORAL)

By way of present petition filed under Section 482 Cr.P.C., a prayer has been made for setting aside the order dated 12.07.2019 passed by learned Judicial Magistrate Ist Class, SAS Nagar (Mohali) vide which the trial Court while releasing the vehicle i.e. Truck bearing Registration No.PB-10-FF-3748, on sapurdari, directed the petitioner to furnish bank guarantee equivalent to the value of its insurance.

Learned counsel for the petitioner submits that in the present case, FIR No.0318 dated 08.12.2018 was registered at Police Station Sohana, District SAS Nagar, Mohali under Sections 61/1/14 of the Excise Act, 1914 and the truck bearing No.PB-10FF-3748, which was the ownership of present petitioner, being allegedly involved in the said case, was confiscated. He further submits that an application was moved for releasing the vehicle on Sapurdari and the same was allowed vide order dated 12.07.2019, but however, an onerous condition was imposed to the effect that the same would be released on furnishing of bank guarantee equivalent to the value of insurance of the vehicle. Leaned counsel also submits that the petitioner is ready to fulfill all the conditions mentioned in

the order, but points out that the condition with respect to furnishing of bank guarantee is very onerous and instead of the same, a condition be imposed for furnishing of a personal bond equivalent to the value of insurance of the vehicle. For the same, learned counsel for the petitioner has relied upon a judgment dated 23.02.2021 passed by a Coordinate Bench of this Court in CRM-M-18703-2020 titled as **Arshdeep Singh Vs. State of Punjab**. He again submits that there is no such provision under Section 78 (2) of the Excise Act to direct furnishing of bank guarantee.

On the other hand, learned State counsel, who has advance notice in the present petition, opposed the prayer while submitting that the condition which has been imposed with respect to the furnishing of bank guarantee as per the value in insurance of the vehicle is as per Section 78 (2), which was incorporated vide Act No.21 of 2017 in the Punjab Excise (Second Amendment) Act, 2017, for short 'the Act', however, he has not been able to controvert the applicability of order dated 23.02.2021 passed in **Arshdeep Singh's case** (supra).

I have heard learned counsel for the parties and perused the paper-book.

It is not in dispute that the application, which had been filed by the petitioner for releasing the vehicle, in question, on Sapurdari, was found to be meritorious and was allowed. While allowing the said application, it was observed in the order dated 12.07.2019 that no useful purpose would be served by keeping the said vehicle in police compound. Although, said order was passed on 12.07.2019, but on account of the condition of furnishing bank guarantee, the petitioner was not been able to get the

vehicle released and thus, the condition of the impugned order is apparently onerous. A Coordinate Bench of this Court, while dealing with somewhat similar issue, in **Arshdeep Singh's case (supra)** has held as under:-

“After hearing learned counsel for the parties, considering the hardship being faced by the petitioner that he is unable to get his vehicle released for the last one and half year and also in view of the fact that the vehicle is lying unused and parked in police station in an open space and may outlive its life, I deem it appropriate to substitute the condition of furnishing bank guarantee of Rs.2.50 lacs with furnishing of personal bond in a sum of Rs.2.50 lacs and additional security bond of Rs.2.50 lacs.

Accordingly, this petition is allowed and the order dated 24.06.2020 passed by the trial Court is set aside.

With aforesaid modification, present petition stands disposed of.”

Even the above case is a case in which a condition of furnishing bank guarantee of Rs. 2.50 lacs was imposed for the release of the vehicle, in question, on superdari and the said condition was modified after considering the hardship that was being faced by the petitioner therein.

The facts of the present petition are similar to the facts of the abovesaid case.

Keeping in view the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 12.07.2019 stands modified, only to the extent that the condition imposed for furnishing of bank guarantee, is modified and instead of the said condition, the petitioner would submit personal bonds for a sum equivalent to the value of

insurance of the vehicle; whereas the other conditions as mentioned in the impugned order would remain the same.

With the aforesaid modification in the impugned order dated 12.07.2019, the present petition is disposed of.

Feburary 17, 2023
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>