

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-13084-2022 (O&M)
Date of decision: 20.03.2023

SANDEEP KAUR SIDHU

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Swarn Tiwana, Advocate for the petitioner

Mr. R. S. Khaira, DAG, Punjab

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 Cr.P.C. for setting aside or modifying the impugned order dated 22.07.2021, Annexure P-5 passed by the Sessions Judge, Barnala wherein the revision against the order dated 12.07.2021, Annexure P-4 passed by ACJM, Barnala has been affirmed vide which the vehicle of the petitioner i.e., i20 Asta Car bearing Registration No. PB-19R-7104 was ordered to be released on sapurdari, subject to deposit bank guarantee to the tune of Rs.5 lakh or cash value of Rs. 5 lakh by the petitioner.

Briefly put, the police conducted a nakabandi on the basis of a secret information and as alleged, recovery of illegal liquor was affected from the car, which was being driven by Lakhvir Singh, the husband of the petitioner, that led to registration of FIR No. 69 dated 16.06.2021 registered under Sections 61, 78 (2) of the Punjab Excise Act, 1914, against him. The trial Court allowed the application for release of the vehicle on sapurdari in

favour of the petitioner vide order dated 12.07.2021 contingent *inter alia* on her furnishing a bank guarantee of Rs.5 lakh or cash value of Rs. 5 lakh. The petitioner impuissant to fulfill this condition, laid an unsuccessful challenge to the order before the Sessions Court, Barnala, whereby the revision was dismissed vide order dated 22.07.2021.

Learned counsel submits that the petitioner is not in a position to deposit such a huge amount and while referring to para 8(d) of the petition, states that she is willing to furnish surety bonds of double the amount as mentioned in the impugned order. Reliance is placed on the judgment of this Court in the case of **Aman vs. State of Haryana**, CRM-M-57380-2022, decided on 16.02.2023.

Learned State counsel opposes the petition and submits that the order passed by the Courts below are legal and valid.

Heard.

At the outset, it may be noticed that Section 451 Cr.P.C., clearly empowers the Court to pass appropriate orders for custody and disposal of property pending trial in certain cases:-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

It would be worthwhile to make a reference to judgment of Hon'ble The Supreme Court in **Basavva Kom Dyamangouda Patil vs. State of Mysore**, (1977) 4 SCC 358, wherein it was held that, the object and scheme of the various provisions of the Code appear to be that where the

property which has been the subject-matter of an offence is seized by the police, and it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that it should be restored to the original owner after the necessity to retain the same ceases. This may particularly be necessary where the property concerned is subject to speedy or natural decay.

Hon'ble The Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat**, 2003 (1) RCR (Crl.) 380, held that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

“In our view, the powers under Section 451Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

Neither the State nor the owner of the vehicle is going to be benefited, if the vehicle in the premises of the police station occupies a larger space posing inconvenience to the Police Department. Further, it is an open secret that when a vehicle remains unattended, there is every

possibility that its valuable parts can be taken away or stolen. By the time, at the end of the trial, when the Court arrives at a conclusion that the vehicle was used for committing the crime, its condition would have substantially deteriorated. On the other hand, if the Court finds that it was not used for commission of the crime or was used without the knowledge of the owner thereof, in that eventuality the person concerned will have to collect only the scrap of such a vehicle. To put it in other words, nobody will be benefited out of the idle parking of such vehicles.

Adverting to the facts of the case, the vehicle in question being a car, admittedly in ownership of the petitioner, was taken into custody on 16.06.2021, when her husband Lakhveer Singh was allegedly apprehended with country made liquor. The trial of the case is going on. The police has not raised any objection to its release, as noticed in the impugned order. Thus, the vehicle has rightly been ordered to be released by the trial Court with certain conditions.

On behalf of the petitioner, it has been submitted that, she is not in a sound financial position to be able to deposit the bank guarantee/cash value of Rs.5 lakh for its release, but in lieu thereof, is ready and willing to furnish surety bonds of double the amount as mentioned in the impugned order.

In State of Kerala vs. A.A. Ali, 2018 (4) RCR (Crl.) 112, Hon'ble The Supreme Court held that Court should not insist on furnishing bank guarantee in cases like such. This Court in the case of **Sukhdev Singh @ Kala vs. State of Punjab** in CRM-M-48284-2022 decided on 15.12.2022 and **Sukhpal Singh vs. State of Punjab** in CRM-M-54147-2021, decided

on 15.12.2022, wherein the impounded vehicles were ordered to be released on furnishing of surety instead of bank guarantee.

In view of the facts and circumstances of the case, the present petition is disposed by modifying the order of the trial Court only to the extent that the petitioner would furnish the surety bonds, of twice the amount as mentioned in the impugned order passed by the trial Court, while the remaining conditions are to remain intact.

(AMAN CHAUDHARY)
JUDGE

March 20, 2023
Mehak

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