

CRM-M-19494-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(252)

CRM-M-19494-2022

DATE OF DECISION:- 31.07.2023

JASWANT SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Abdul Aziz, Advocate for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab
for the State-respondent.

SUVIR SEHGAL, J. (Oral)

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner is seeking modification of order dated 08.07.2021, Annexure P-2, passed by learned JMIC, Patiala, whereby petitioner has been directed to furnish bank guarantee of Rs.7 lacs with one surety of the like amount, besides other conditions, for the release of the car on suparadari.

2. Counsel for the petitioner submits that FIR No.139 dated 30.05.2021 has been lodged for offence under Sections 61, 78 (2) of the Punjab Excise Act, 1914 at Police Station Anaj Mandi, District Patiala, Annexure P-1, on the basis of secret information. A police barricade was set up and Jaswant Singh alias Satti and Parveen Kumar alias Prince were apprehended with 660 bottles of liquor while travelling in a *Verna* car bearing registration No.PB-19 J-6183.

3. Counsel for the petitioner submits that the petitioner, who is the registered owner of the car, has been implicated as an accused and has been released on bail. He submits that petitioner's application for release of the vehicle on supardari has been accepted by the Trial Court vide order, Annexure P-2, by imposing the conditions noticed above. Counsel asserts that petitioner had purchased the car in December, 2018 on loan from a bank. He has referred to the loan statement, Annexure P-3, to fortify his submission. He submits that the resale value of the car is less than Rs. 3 lakh and the condition of furnishing of bank guarantee of Rs.7 lacs is harsh.

4. Opposing the petition, State counsel while referring to the stand taken by the State in the reply filed by way of an affidavit of Deputy Superintendent of Police, City-II, District Patiala, which is taken on record, submits that the Trial Court has imposed the condition of furnishing of bank guarantee in the light of Section 78 of the Punjab Excise Act, 1914. While supporting the impugned order, he has also referred to the antecedents of the petitioner and submits that the final report has been submitted before the Trial Court, charges have been framed and the trial is underway.

5. I have considered the submissions made by counsel for the parties.

6. At the outset, argument of the State counsel deserves to be dealt with. Third proviso to Section 78 (2) of the Punjab Excise Act, 1914 provides that during the pendency of the trial, confiscated conveyance can be released on submission of surety in the form of cash surety or bank guarantee equivalent to the value of the conveyance

thereof. This provision came to be challenged before a Division Bench of this Court in **CWP-24941-2019** titled as “**Darshan Singh Versus State of Punjab**” and another petition, decided on 28.01.2020, which was disposed of by passing the following order:-

“1 This order shall dispose of above mentioned two petitions. Since common questions of law and facts are involved therein, they are being decided by this common order.

2 CWP No.24941 of 2019 has been filed for quashing of notification No.31-LEG/2017 dated 21.12.2017 (Annexure P-3) issued by respondent.

3 And CWP No.18946 of 2019 has been filed for quashing of the amended proviso to Section 78 (2) of the Punjab Excise Act, 1914 which has been introduced vide the Punjab Excise (Second Amendment) Act, 2017 (Annexure P-1) whereby the security for release of the confiscated conveyance has been restricted to cash security or bank guarantee and for quashing of order dated 18.04.2019 (Annexure P-5) passed by Sh.Amrish Kumar, Sub-Divisional Judicial Magistrate, Jagraon.

4 Today learned State counsel states that he has received instructions that the State is willing to re-consider its stand.

5 Counsel for the petitioner in CWP-18946-2019 points out that while this is a welcome step the fact is that the vehicles have been now retained in the police custody since

March, 2013 and July, 2019 respectively and the balance of convenience is in favour of the petitioners and therefore, the vehicles should be released.

6 *In the circumstances, we deem it appropriate to order the release of the vehicles on Sapurdari on the condition that the petitioners shall deposit 20% of the assessed amount in cash and give security for the remaining amount along with the other conditions which may have been imposed by the Court to the satisfaction of the Trial Court.*

7 *In view of the stand of the State it is clear that no useful purpose would be served by keeping these petitions pending. Consequently, the same are disposed of as having been rendered infructuous*

8 *It is however hoped that the State would take an expeditious decision on this issue so that more such litigation does not flood the Courts. The issue of vires is kept open.*

9 *Both the petitions stand disposed of with the above terms. However the issue against vires of the notification is kept open.*

10 *Since the main cases have been disposed of as infructuous, the pending Miscellaneous Applications, if any, also stand disposed of."*

7. While disposing of the above petition, the Division Bench hoped that the State would take an expeditious decision on the issue.

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However, there is no material on the record of the instant petition nor it could be referred to during the course of arguments to show that any decision has been taken by the State.

8. In so far as the condition regarding furnishing of Fixed Deposit is concerned, this Court is of the considered opinion that the condition imposed by the Trial Court is onerous. Furnishing of bank guarantee practically amounts to making a deposit in cash, which tantamounts to denial of relief. Similar condition has been disapproved of by the Hon'ble Supreme Court in *Keshab Narayan Banerjee and another Versus The State of Bihar, AIR 1985 SC 166* and in *Sandeep Jain Versus National Capital of Delhi, (2002) 2 SCC 66*.

9. In the backdrop of the above noticed position, this Court has no hesitation in acceding to the prayer made in the petition and modifying the impugned order.

10. Accordingly, condition imposed by the Trial Court in impugned order dated 08.07.2021, Annexure P-2, requiring the petitioner to furnish bank guarantee of Rs.7 lacs is set aside and petitioner is directed to furnish security equivalent to Rs.3.5 lacs, which is approximately equivalent to the re-sale value of the vehicle, along with two solvent sureties of the like amount to the satisfaction of the Trial Court concerned. The other conditions imposed by the Trial Court shall remain unaltered.

11. Petition is disposed of.

12. However, noticing the above reproduced observations of a Division Bench made way back in January, 2020, as it seems that no steps have been taken by the State to remedy the situation, this Court

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deems it appropriate to call for a status report from the Principal Secretary, Department of Excise and Taxation, Government of Punjab.

13. List on 21.09.2023 for the said purpose.

31.07.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No