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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-22426-2022
Date of Decision: 23.01.2023**

SANJU

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. J.K. Singla, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER, J. (Oral)

This petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 07.02.2022 passed by learned Trial Court in FIR No.105 dated 02.08.2021 under Section 78(2) and 61 Excise Act (Act No.1 of 2014) registered at Police Station City Budhlada, District Mansa, vide which the trial Court, while releasing the vehicle on superdari, directed the petitioner to furnish cash surety/bank guarantee of Rs.2,50,000/-. Petitioner has also sought setting aside of the order dated 16.04.2022 passed by learned Additional Sessions Judge, Mansa in the Criminal Revision No.04 dated 04.04.2022 titled as *“Sanju Vs State of Punjab”*, whereby the revision petition filed by petitioner was dismissed.

Learned counsel for the petitioner submits that the trial Court

has put very stringent condition of furnishing cash surety/bank guarantee, on the petitioner. It is submitted that the petitioner is a poor person and surviving his livelihood by running the vehicle on rent basis and due to which, he is unable to comply with the above said condition of furnishing cash surety/bank guarantee of Rs.2,50,000/- imposed by the trial Court and, therefore, he has failed to get his vehicle released. It is further submitted that the petitioner having being failed to comply with the said condition, filed the revision petition (Annexure P-3) before the learned Additional Sessions Judge, Mansa, for modifying order dated 07.02.2022 (Annexure P-2) and requested for releasing his vehicle on furnishing surety bonds or on any other condition except the above said condition as imposed upon him vide order dated 07.02.2022 (Annexure P-2), however, the said revision petition was dismissed. Learned counsel submits that the condition imposed in the impugned order dated 07.02.2022 may be substituted with the condition of furnishing security bond/personal bond, for releasing the vehicle bearing registration No. PB-31-L-8657 on superdari, which was confiscated in FIR No. 105 dated 02.08.2021 under Section 78 (2) and 61 of Excise Act, 1914.

In support of his submission, learned counsel for the petitioner has relied upon a judgment of a Co-ordinate Bench of this Court dated 23.02.2021 in **CRM-M-18703-2020 titled as Arshdeep Singh Vs. State of Punjab.**

Per contra, learned State counsel has supported the order dated 07.02.2022 (Annexure P-2) passed by the trial Court and also the order dated 16.04.2022 passed by Revisional Court by submitting that the said orders are based on new policy issued by the Punjab Government under Section 78(2) of the Act, which provides that the vehicle cannot be released during the trial, as the same is liable to be confiscated, however, the Magistrate may

give an option to pay an amount equal to the value of the vehicle on submission of security (in form of cash surety or bank guarantee).

This Court has heard the learned counsel for the parties and has 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 Superdari, has been found to be meritorious and was allowed. Although, the said order was passed on 07.02.2022 but on account of the condition of deposit of security to the tune of Rs. 2,50,000/- in the form of cash surety or Bank guarantee, the petitioner has not been able to get the said vehicle released.

The Coordinate Bench of this Court in Arshdeep Singh's case (supra) has held as under:

“XXX-XXX-XXX

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 in the above case, a condition of furnishing bank guarantee of Rs. 2,50,000/- 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 instant case are similar to the facts of the above referred case.

Keeping in view the facts and circumstances mentioned above, the present petition is allowed and the impugned order dated 07.02.2022 is modified, only to the extent whereby the condition has been imposed “to furnish cash security/bank guarantee in the sum of Rs.2,50,000/-”, and instead of the said condition, the petitioner would comply with the following condition :-

“ The petitioner would submit personal bond in the sum of Rs.2,50,000/- and also submit additional security bond of Rs.2,50,000/-.”

The other conditions as mentioned in the order dated 07.02.2022 (Annexure P-2) would remain the same.

Accordingly, the present petition is disposed of with the aforesaid modification in the impugned order.

23.01.2023

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**(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No