

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

281

CRM-M-23096-2023 (O&M)
Date of decision: 18.07.2023

AJAY PARTAP SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vishal Goel, Advocate for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN. J.(Oral)

1. Prayer in the present petition, filed under Section 482 of the Cr.P.C is for setting aside the impugned order dated 10.05.2022 (Annexure P-2) passed by learned Additional Chief Judicial Magistrate, Patiala, as well as order dated 09.01.2023 (Annexure P-3) passed by learned Sessions Judge, Patiala, whereby, the petitioner has been ordered to furnish sapurdari bonds in the sum of Rs.3 lakhs with one surety in the like amount alongwith bank guarantee to the tune of Rs.1 lakh as a condition precedent for release of vehicle.

2. Petitioner is accused in FIR No.119 dated 21.06.2021, under Sections 420, 465, 467, 468, 471 IPC and 61(1) (A), 61(1) (c), 63A and 24/1/14 of Punjab Excise Act, 1914 registered at Police Station Urban Estate, District Patiala.

3. As per the story put forth by the prosecution, illicit liquor was recovered from the house alleged to be on rent with the petitioner. Police authorities had taken into possession a car i.e Skoda Rapid bearing registration No.PB-11-CX-7932. The petitioner moved an application seeking release of the

vehicle which was allowed by the trial Court, vide order dated 10.05.2022 (Annexure P-2), subject to the condition that petitioner shall furnish sapurdari bonds to the tune of Rs.8 lakhs with one surety in the like amount alongwith bank guarantee of equivalent amount. In the revision preferred by the petitioner, the Revisional Court has observed as under:-

“7. I have gone through the above judgments and also gone through the provisions of Section 78 of Punjab Excise Act, which deals with confiscation of vehicles and other things recovered on the registration of FIR under Punjab Excise Act. As per Section 78(2) of Punjab Excise Act, the court of Magistrate is to decide, whether, the article, which has been taken into police possession at the time of registration of FIR or investigation is liable to confiscation and if Court decides that it is liable to be confiscated, then, same can be given to the owner of thing/vehicle to pay such fine as Magistrate thinks fit. It is further provided that where quantity of recovered liquor exceeds 27 bulk liters of country made or foreign liquor, vehicle is to be confiscated by the Magistrate. However, Magistrate can give owner of vehicle or thing, which is to be confiscated, to option to pay amount equal to the value thereof estimated by the Magistrate. In the present case, if the trial Court file is gone into, then, it is found that no liquor was recovered. So, in this case, even if the Magistrate decides to confiscate the vehicle, then, he may decide, as to which fine, owner should paid in lieu of confiscation of the vehicle. Thus, in these circumstances, I am of the opinion that ordering of furnishing bank guarantee to the tune of Rs.8.00 Lac on the revisionist is not justified, rather, it is unjust condition imposed on the owner of the vehicle to get the vehicle released on sapurdari. So, in view of above discussion, order passed by the trial Court is required to be modified. Hence, present revision is partly allowed and order dated 10.5.2022 passed by the trial court is modified to the extent that vehicle in question is ordered to be released to revisionist on sapurdari on his furnishing sapurdari bonds in the sum of Rs.3.00 Lac with one surety in the like amount alongwith bank guarantee to the tune of Rs.One Lac. Other terms and conditions are to remain same as mentioned in the order dated 10.5.2022. Record of the trial Court be returned forthwith. The file of revision be consigned to the record room.”

4. Learned counsel for the petitioner relies upon Section 78 of the Punjab Excise Act to submit that after the amendment was incorporated, the

vehicle ought to have been confiscated only where there is a reason to believe that such vehicle was used in the commission of the offence.

5. In view of the above, order passed by the Revisional Court dated 09.01.2023 is modified to the extent that the condition with respect to furnishing of bank guarantee is ordered to be deleted.

6. Disposed off accordingly.

(PANKAJ JAIN)
JUDGE

July 18, 2023
Amandeep

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