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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28094-2021 (O&M)

Date of decision: 13.09.2023

Sanjeev Kumar

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Santosh Bhardwaj, Advocate,
For the petitioner.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Present petition has been filed by the petitioner seeking setting aside of impugned order dated 10.05.2021 (Annexure P-2) passed by learned Judicial Magistrate First Class, Kurukshetra and order dated 27.05.2021 (Annexure P-3) passed by learned Additional Sessions Judge, Kurukshetra (Revisional Court) arising out of FIR No.170 dated 04.05.2021 under Section 61 of the Punjab Excise Act, 1914 and Sections 188 and 270 of IPC and Section 51-B of Disaster Management Act, 2005, at Police Station, Kurukshetra University, Kurukshetra, whereby, his application for release of offending vehicle, i.e., car bearing registration No. HR70-C-3115 Make Ritz on *sapurdari*, was rejected

2. Learned counsel for the petitioner submits that vehicle in question was taken into possession by the police by alleging that vehicle in question had been used in illegal smuggling of liquor on 04.05.2021 by the police party headed by SI Ram Singh, who is the complainant in the aforesaid above mentioned FIR. Petitioner filed an application for releasing the vehicle on *Sapurdari* but the same was dismissed by learned trial Court vide impugned order dated 10.05.2021 (Annexure P-2). After the dismissal of application, petitioner filed a revision petition, which too was dismissed vide another impugned order dated 27.05.2021 (Annexure P-3) and vehicle in question was denied to be released on *Sapurdari*.

2.1. He further submits that said vehicle is no longer required for any evidentiary purpose and if the same will be kept in custody of police, it may result in deterioration of the same and diminishing the value of vehicle. It will become useless in *Malkhana* and petitioner will be deprived of its use and also suffer monetary loss. He further urges that vehicle in question has not been confiscated so far and the same is still lying in police station. No article can be kept for a long time at the police station in any case, for not more than 15 days to one month as per provisions of Cr.PC., contends the learned counsel. The alleged offence in which the vehicle is involved in the present case is not a major offence, so it does not fall within the purview of Section 72-F of the Excise Act.

2.2 He further submits that petitioner is ready to give an undertaking being registered owner of the vehicle in question before the police authorities and before the Court below that the vehicle in question will be produced whenever required and ordered, during trial.

2.3 Learned counsel for the petitioner further contends that in view of the decision of a Division Bench of this Court in case of '*Gurbinder Singh @ Shinder versus State of Punjab*'¹, , there is no bar for release of the vehicle on sapurdari even in case of a conviction under Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act'). He further urges that case of petitioner is on much better footing, it being a case under the Punjab Excise Act, 1914.

3. Learned State counsel does not controvert that petitioner is the registered owner of the vehicle in question. But he opposes the prayer of the petitioner on the ground that vehicle was used in smuggling illicit liquor violating the directions of the Government.

4. Arguments heard.

5. As per the decision in *Gurbinder Singh @ Shinder's case (supra)*, provisions of Section 451 of the Code of Criminal Procedure, 1973 are applicable

to the vehicle seized under the NDPS Act as well. There is no dispute that petitioner is the registered owner of the vehicle, therefore, in view of judgment in **Gurbinder Singh @ Shinder's case** (supra), the impugned orders passed by the learned Judicial Magistrate First Class, Kurukshetra and learned Additional Sessions Judge, Kurukshetra are not legally sustainable.

6. To avoid vehicle in question from deteriorating in the police compound, the release on *sapurdari*, of vehicle in question, to the petitioner, is both just and fair.

7. No useful purpose would be served by keeping the vehicle in question in police custody. Consequently, the present petition is allowed and the impugned orders are set aside. The car bearing registration No. HR70-C-3115 Make Ritz is ordered to be released on *sapurdari*, to the petitioner, but subject to his furnishing personal and surety bonds in the shape of *Sapurdginama* to the satisfaction of learned trial Court concerned with an undertaking that it shall not be re-utilized for transportation therein of any liquor and in case it is re-utilized for any prohibited purpose, it will be open to learned State counsel, to make an appropriate application, before this Court for recalling of this order. Petitioner shall also give with an undertaking that the colour and number of the car shall not be tampered, in addition an undertaking that he shall produce it, before the Court concerned, as and when directed.

8. Disposed of accordingly.

9. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

13.09.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No