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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50275-2023 (O&M)

Date of decision: 06.10.2023

Happy Kumar

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arvinder Arora, Advocate,
For the petitioner.

Ms. Svaneel Jaswal, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Aggrieved by the condition of furnishing a bank guarantee equal to the amount of the fine/penalty imposed by the Mining Department within a period of two months and also to furnish *Superdarinama* in the sum of Rs. 20 lakh with one surety in the same amount, the petitioner is before this Court. The said condition has been imposed while allowing the application for releasing the vehicle bearing registration No. HR-37E-2040 on Supurdari vide the impugned order dated 05.01.2022 (Annexure P-6), passed by the learned Sub-Divisional Judicial Magistrate, Naraingarh.

2. Learned counsel for the petitioner submits that a false FIR No. 246 dated 06.12.2021, under Section 379 of the IPC and Sections 21 (1) and 21 (4) (A) of the Mines and Minerals (Development and Regulation) Act, 1957, at Police Station Shahzadpur, was registered against the petitioner, and the aforementioned vehicle was impounded.

2.1. He further submits that, vide the impugned order dated 05.01.2022 (Annexure P-6), the learned Judicial Magistrate allowed the application for *superdari* of the above-said vehicle and also dismissed the application moved by respondent No. 2 for confiscation of the vehicle in question.

2.2. However, the petitioner is aggrieved with condition No. (V) imposed by the learned Magistrate, which requires the applicant to furnish a bank guarantee equal to the amount of the fine/penalty imposed by the mining department within a period of two months.

2.3. Learned counsel for the petitioner further submits that the petitioner tried to convince his banker to furnish a bank guarantee to the Court against the security of his immovable assets, but the banker delayed the matter. The petitioner also filed an application dated 04.02.2023 for an extension of time to deposit the bank guarantee. After the bank has refused to provide a bank guarantee against immovable assets, and the learned Magistrate directed the Station House Officer, Police Station, Shahzadpur, to seize the vehicle in question.

2.4. He further submits that the petitioner is a first-time offender, and the harsh decision of the National Green Tribunal is not applicable to the present case. Releasing the vehicle on superdari against the bank guarantee is punitive in nature. The petitioner does not have sufficient funds to deposit in the bank, and the bank is unwilling to furnish a bank guarantee against immovable assets and is insisting on deposit of the guarantee amount. Seizing the vehicle in question would serve no useful purpose. Moreover, the vehicle in question is not involved in any other case. Further detention would lead to deterioration of its condition, contends the learned counsel.

2.5. Learned counsel further urges that the petitioner is ready to give an undertaking as the 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 the trial.

3. Learned State counsel has objects to the prayer and submits that in the absence of a bank guarantee, if the truck in question is released, there will be no mechanism to recover the compensation/fine amount, if imposed upon the petitioner after adjudication of the notice.

4. Having heard learned counsel for the parties and on perusal of the record, I am of the view that this Court need not delve into the question of the validity or otherwise of the seizure of the truck in question. In the meanwhile, the truck, which has been lying parked/seized, ought to be released, as its further stationary condition would lead to its deterioration beyond repair, but at the same time interest of the department also needs to be secured.

5. In order to meet ends of justice for both sides, release on *superdari* of the vehicle in question on furnishing title papers of immovable property, to be kept as collateral security, seems just and fair.

6. Accordingly, the impugned order is modified to the extent that the petitioner shall furnish title papers of a immovable property worth Rs. 30 lakh, instead of furnishing a bank guarantee of Rs. 20 lakhs, on the conditions already imposed by the learned Magistrate. On doing the needful, the truck in question is ordered to be released to its registered owner on *superdari* upon his furnishing title papers, as aforesaid, and *Superdarinama* in the sum of Rs. 20 lakh with one surety in the same amount on the usual terms and conditions of *superdari*. In case of a breach of any condition/undertaking by the petitioner, it shall be open to the minng department to take stepsto file an appropriate application before the Court below for recalling/cancellation of the instant *superdari*order.

7. Instant petition is, accordingly, disposed of.

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

(ARUN MONGA)
JUDGE

06.10.2023

vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No