

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

CRR-265-2019

Date of decision: 28.11.2024

Balwinder Singh @ Sonu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Kavinder Singh Chhibber, Advocate for
Mr. T.V.S. Lehal, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. This revision petition has been filed by the petitioner against the order dated 13.11.2018 passed by the Court of Additional Sessions Judge, Gurdaspur, vide which an application filed by the petitioner seeking release of Innova Car No.PB-29-R-8165 which was taken into possession by the police in criminal case having FIR No.102 dated 22.08.2016 under Section 21, 27 of NDPS Act, Police Station Dinanagar, on sapurdari was dismissed.

2. The brief facts of the case are that the aforesaid criminal case was registered against petitioner and one Vijay Masih, wherein police seized Innova car No.PB-29-R-8165 and on conclusion of trial, both the accused including the petitioner were acquitted vide judgment dated 01.06.2018 (Annexure P-2). Thereafter, the petitioner being special power of attorney holder of Rajesh Kakkar original owner of the aforesaid Innova



car, filed an application before the Court concerned seeking release of vehicle on sapurdari, but the said application was dismissed by the said Court vide order dated 13.11.2018.

3. Being aggrieved, the petitioner has filed the present revision petition.

4. The counsel for the petitioner *inter alia* submits that at the time of registration of aforesaid FIR, vehicle in question was recovered from possession of the petitioner and the same was seized by the police. It is further submitted that the trial is already concluded, as is evident from Annexure P-2. It is further submitted that the petitioner is authorized by Rajesh Kakkar, its owner to get Innova car on sapurdari vide special power of attorney dated 16.12.2016 and the copy of the same is Annexure P-4. That thus, the petitioner is entitled to get the said car on sapurdari.

5. Report by way of an affidavit of Ravinder Singh, Deputy Superintendent of Police, City Moga, filed on behalf of the Senior Superintendent of Police, Moga is taken on record along with copy of statement Annexure R-1 and death certificate of Gurdish Singh, Advocate Annexure R-2.

6. The present petition is resisted by the State counsel who submits that the petitioner is not entitled to get possession of the vehicle in question, as he is not the registered owner of the same. It is further submitted that there is no illegality or perversity in the impugned order.

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

8. Undoubtedly, the petitioner is not registered owner of Innova

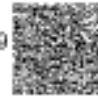


car No.PB-29-R-8165, which was seized by the police in criminal case having FIR No.102 dated 22.08.2016, Police Station Dinanagar. The petitioner and his co-accused who faced trial were acquitted in aforesaid criminal case, as is evident from judgment Annexure P-2. It is the plea of the petitioner that he is having authority to get release the said vehicle on sapurdari, on the basis of special power of attorney Annexure P-4 executed in his favour by Rajesh Kakkar, original owner of the said vehicle.

9. This Court vide order dated 04.09.2024 gave direction to SSP, Moga to get verified the aforesaid special power of attorney Annexure P-4. As per the report which is submitted today on behalf of Senior Superintendent of Police, Moga, Rajesh Kakkar son of Rajpal resident of Moga is not residing at the given address and he shifted to some unknown place and his whereabouts are not known. Further, the advocate at Moga who attested the said special power of attorney has died and copy of his death certificate is Annexure R-2.

10. It is settled position of law that the custody of such like vehicles is to be handed over to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the Court at any point of time. In this context, reference is made to the decision of Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai Vs. State of Gujarat 2002 (10) SCC 283.***

11. Admittedly, Rajesh Kakkar never approached any Court in order to seek possession of the vehicle in question. It is also apparent that the said vehicle was recovered from possession of the petitioner at the time of registration of FIR No.102 dated 22.08.2016. As per special power of



attorney Annexure P-4, Rajesh Kakkar has authorized the petitioner to seek release of vehicle in question on sapurdari from the Court. The criminal proceedings initiated on the basis of FIR No.102 dated 22.08.2016 are already terminated. Thus, no purpose will be served by keeping the car in question with the police, for any longer period.

12. In light of the above, this Court is of the view that the impugned order dated 13.11.2018 is not legally tenable and deserves to be set aside.

13. Consequently, the present petition is allowed and impugned order dated 13.11.2018 is set aside and the application filed by the petitioner seeking release of Innova car No.PB-29-R-8165 on sapurdari is allowed, subject to condition that the petitioner is to furnish sapurdari bond in sum of Rs.12 lacs with one surety to the satisfaction of the trial Court, with undertaking to produce the said car in the Court concerned, as and when called to do so and not to dispose of or change its nature and colour without prior permission of the Court. In case, the petitioner fails to produce the said car before the Court concerned, when asked to do so, the State will be at liberty to seek cancellation of the sapurdari of aforesaid vehicle. Further, the petitioner has also to give undertaking in writing that if the registered owner of the car raises claim, in that case, the petitioner will be liable to indemnify the said claim.

14. Disposed of accordingly.

28.11.2024

Yogesh

(KARAMJIT SINGH)

JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No