

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-7045-2023

Date of Decision:-04.03.2024

Juberdeen @ Juber.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Nafees Ahmad Khan, Advocate for the Petitioner.

Mr. Mohit Saroha, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 482 Cr.PC is for quashing of the impugned order dated 18.11.2022 (Annexure P-4) vide which the SDJM, Samana directed the petitioner to deposit a Bank Guarantee of Rs.5,50,000/- with one surety of the like amount while releasing the Maruti Suzuki Swif VXI Car bearing registration number HR-26EW-3122 on superdari.

2. The brief facts of the case are that the FIR No.220 dated 19.09.2022 under Section 61, 1, 14, 78(2) of Punjab Excise Act P.S. Samana came to be registered against the petitioner and his co-accused with the allegations that they were habitual of selling the liquor in Punjab after bringing the same from Haryana.

Pursuant to the registration of the FIR a barricade was set up and liquor was recovered. The petitioner was arrested on 20.09.2022 and

was granted the concession of bail on 12.10.2022 vide order Annexure P-2.

3. Pursuant thereto the petitioner being the registered owner of the vehicle bearing registration number HR-26EW-3122 filed an application before the SDJM, Samana for release of the said vehicle on superdari. However, while allowing the Court application directed the petitioner to deposit a bank guarantee of Rs.5,50,000/- with one surety of the like amount and imposed certain other conditions as well. The copy of the said order dated 18.11.2022 is attached as Annexure P-4 to the petition.

4. The aforementioned order is under challenge in the present petition to the extent that the petitioner has been directed to deposit a bank guarantee of Rs.5,50,000/-.

5. The Counsel for the petitioner contends that in view of the judgment of this Court in ***Darshan Singh Vs. State of Punjab CRM-M-24941-2019 Decided on 28.01.2020***, the petitioner should be ordered to deposit 20% of the assessed amount in cash and give security for the remaining amount.

6. The Counsel for the State on the other hand while referring to the reply dated 14.11.2023 contends that no fault can be found with the impugned order as the petitioner was one of the main accused. Charges stood framed against him in the present FIR and he was a habitual offender with other cases registered against him.

7. I have heard learned Counsel for the parties.

8. In ***Darshan Singh Vs. State of Punjab(supra)*** it was held as under:-

“ 1. This order shall dispose of above mentioned two petitions. Since common questions of law and facts are involved therein, they are being decided by this common order.

2. CWP No.24941 of 2019 has been filed for quashing of notification No.31-LEG/2017 dated 21.12.2017 (Annexure P-3) issued by respondent.

3. And CWP No.18946 of 2019 has been filed for quashing of the amended proviso to Section 78 (2) of the Punjab Excise Act, 1914 which has been introduced vide the Punjab Excise (Second Amendment) Act, 2017 (Annexure P-1) whereby the security for release of the confiscated conveyance has been restricted to cash security or bank guarantee and for quashing of order dated 18.04.2019 (Annexure P-5) passed by Sh.Amrish Kumar, Sub-Divisional Judicial Magistrate, Jagraon.

4. Today learned State counsel states that he has received instructions that the State is willing to re-consider its stand.

5. Counsel for the petitioner in CWP-18946-2019 points out that while this is a welcome step the fact is that the vehicles have been now retained in the police custody since March, 2013 and July, 2019 respectively and the balance of convenience is in favour of the petitioners and therefore, the vehicles should be released.

6. In the circumstances, we deem it appropriate to order the release of the vehicles on Sapurdari on the condition that the petitioners shall deposit 20% of the assessed amount in cash and give security for the remaining amount along with the other conditions which may have been imposed by the Court to the satisfaction of the Trial Court.

7. In view of the stand of the State it is clear that no useful purpose would be served by keeping these petitions pending. Consequently, the same are disposed of as having been rendered infructuous.

8. It is however hoped that the State would take an expeditious decision on this issue so that more such litigation does not flood the Courts. The issue of vires is kept open.

9. Both the petitions stand disposed of with the above terms. However the issue against vires of the notification is kept open.

10. Since the main cases have been disposed of as

infructuous, the pending Miscellaneous Applications, if any, also stand disposed of.”

9. In view of the aforesaid order passed, I deem it appropriate to order the release of the vehicle on superdari on the condition that the petitioner shall deposit 20% of the assessed amount in cash and give security for the remain amount along with the other conditions which may have been imposed by the Court to the satisfaction of the Trial Court.

10. Disposed of with the aforementioned directions.

(JASJIT SINGH BEDI)
JUDGE

March 04, 2024
Vinay

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