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2024:PHHC:024450

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-7314-2024  
DECIDED ON: 21.02.2024

SALWINDER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C., for setting aside the order dated 28.08.2023 (Annexure P-1) passed by ACJM, Patiala, whereby the bank guarantee of Rs.3,00,000/- was ordered to be furnished for release of Verna Car bearing registration No.HR 51 AT 6005 on sapurdari, which is a case property in the FIR No.165 dated 19.11.2022, under Sections 61-1-14-78(2) of Excise Act, 1914 (Annexure P-2) registered at Police Station Sadar Patiala, District Patiala.
2. To sum up the case, it would be appropriate for this Court before commenting upon the merits of the case, to go through the factual aspects as narrated in the FIR, which read as under:-

*“This time, a Ruqa is received from ASI Ashok Kumar 2520 / P \* ti Special Cell Patiala for registration of FIR U/s 61,78(2)/1/14 Excise Act against Salwinder Singh @ Chinda S/o Balwinder Singh R/o Village Budhanpur, and Ajay Partap Singh S/o Gurpartaap Singh R/o Kothi No. 52, Lohinoor Velly, Village Baran, District Patiala received*

*in Police Station by the hand of Constable S. Amninder Singh 949/Pti, the contents of which are that: To The Officer Incharge, Police Station Sadar Patiala, Jai Hind, Today myself ASI along with ASI Balbir Singh No. 2701 / P \* ti ASI Rajesh Kumar No. 2264 / P \* ti ASI Harish Kumar No. 1416 / P \* ti ASI Harjinder Singh No. 3099/Pti, ASI Ram Lal 2757and Constable Jagroop Singh No. 939/Pti andConstable S. Amninder Singh 949/Pti on Govt. Vehicle for patrolling reached at phirni of Village Raipur Mandalla to Near Gugga Mari at Bahadargarh main road, then a white color car coming from Bahadargarh side turns toward Raipur Mandalla village, to whom given the signal to stop and along with companion caught them and asked for their name and address. Then the driver of the car no. HR51 AT 6005 told his name Salwinder Singh @Chinda S / o Balwinder Singh R / o Village Budhanpur, and the person sitting on the adjoining seat told his name Ajay Partap Singh S/o Gurpartaap Singh R/o Kothi No. 52, Lohinoor Velly, Village Baran, District Patiala. On the checking of the car from the back seat and the boot of the car, 720 bottles of desi liquor mark Shokin Santra for sale in Chandigarh was recovered. That then 720 bottles of desi liquor were unbottled in one big drum and one quarter was taken out of desi liquor mark Shokin Santra for sale in Chandigarh as sample and left of liquor of 719-3/4 bottles of desi liquor mark Shokin Santra for sale in Chandigarh were put in three drums and empty 720 bottles of desi liquor mark Shokin Santra for sale in Chandigarh were put in three bags and 60 empty hard paper boxes were put in separate bag and all the parcels were sealed by me ASI with my stamp AK and samples were separately sealed and stamped. That the stamps were handed over to ASI Balbir Singh after use and the above parcels were taken in police custody by me ASI and signatures were taken from the witnesses on the fard and the white car bearing no. HR51 AT 6005 were taken into police custody vide separate fard. That no license or permit has been shown by Salwinder Singh and Ajay Partap for carrying the recovered liquor. Who carrying the 60 boxes of liquor of Theka Desi in their car without permit complete the offence u/s 61- 78(2)/1/14 of excise act. therefore,*

*I, ASI after writing Ruqa against Salwinder Singh and Ajay Partap Singh, the same is being sent to the Police Station Sadar Patiala by the hand of C. Amninder Singh No. 949 for registration of fir. After register the case, the number of the same be intimated and information be supplied to Incharge Control Room Patiala. Myself ASI along with associate officials is at the spot for investigation.”*

3. An application for the release of Car bearing No.HR-51-AT-6005 was moved by the petitioner on Sapurdari being the owner, but as per the registration certificate, the vehicle stands registered in the name of one Ashish Jaiman, whereas the name of the petitioner is Salwinder Singh s/o Balwinder Singh. The said vehicle is stated to be transferred subsequently and on that account NOC has also been issued by the Regional Transport Officer (RTO) concerned. On perusal of the FIR as well as order dated 28.08.2023 (Annexure P-1), this Court has no doubt that the vehicle was recovered from the possession of the accused, which is standing idle in the police station and is serving no purpose. Though, it is a case of the petitioner that if the vehicle is released on Sapurdari, the same would be beneficial to the owner of said vehicle and therefore, taking a lenient view in the light of aforesaid aspects, learned trial Court has passed an order for release of vehicle on Sapurdari on furnishing Sapurdari bonds in the sum of Rs.3,00,000/- with a Bank Guarantee, subject to the following conditions, which read as under:-

*“1. That the applicant shall produce the vehicle in question on each and every date of hearing or as an when directed by the Court,  
2. That he shall not change its colour or nature etc.,  
3. That he shall not alienate the said vehicle without prior permission of this Court.”*

4. The aforesaid order has been assailed before this Court on the ground that the amount stipulated as Bank Guarantee to be furnished seeking the release of the vehicle on Sapurdari is on the higher side and relies upon a judgment passed by

a Division Bench of this Court passed in CWP-24941-2019 titled as “***Darshan Singh vs. State of Punjab***” decided on 28.01.2020, wherein the following observations were made, which read as under:-

*“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 alongwith the other conditions which may have been imposed by the Court to the satisfaction of trial Court.”*

5. This Court has gone through the said order, which is a judgment in *rem* to be followed and the same has been passed keeping in view the facts and circumstances of that case in itself and cannot be treated as a precedent, which otherwise would tantamount to take a contrary stand to the provisions of Section 78(2) of the Punjab Excise Act, 1914, which reads as under:-

*“Section 78(2): When confiscation may be ordered. - When in the trial of any offence punishable under this Act the Magistrate decides that anything is liable to confiscation under sub-section (1), he may order confiscation; [Provided further that in cases where the quantity of liquor found at the time or in the course of detection of such offence exceeds twenty-seven bulk liters of country liquor and foreign liquor, the Magistrate shall order the confiscation of conveyance. However, in lieu of ordering confiscation of conveyance, the Magistrate may give the owner of the conveyance liable to be confiscated an option to pay an amount equal to the value thereof as estimated by the Magistrate”.*

6. This Court after having recorded the submissions and discussions made hereinabove, is of the considered view that the security for release of confiscating conveyance has been restricted to cash security or bank guarantee and to quash the order dated 28.08.2023, the petitioner has failed to establish any reason as to on what account he has assailed the bank guarantee to the tune of Rs.3,00,000/- as

surety bonds, which is alleged to be on the higher side against a vehicle i.e., a Verna Car, whose market value is tentatively more than Rs.3,00,000/-.

7. Since the vehicle is a case property, the trial Court has cautiously and judiciously assess the amount of bank guarantee, which does not warrant any interference by this Court, as no perversity or illegality could be found in the impugned order dated 28.08.2023 (Annexure P-1).

8. In view of the above, the present petition stands dismissed being devoid of merits with no order as to costs.

21.02.2024

Meenu

(SANDEEP MOUDGIL)  
JUDGE

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|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |