

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

CRM-M-15766-2023

Date of Decision:-15.01.2024

Anuradha.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Ajay Nain, Advocate with
Mr. Ankit Patter, Advocate,
Mr. Aryavart and
Mr. Kartik, Advocate for the Petitioner.

Mr. Rajiv Goel, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 482 Cr.PC is for quashing of the order dated 21.07.2022 passed by Additional Sessions Judge, Rohtak vide which the application of the petitioner for releasing the vehicle on superdari was dismissed in case bearing FIR No.323 dated 25.07.2022 under Section 18(C) NDPS Act P.S. Meham, Rohtak, Haryana.

2. The brief facts of the case are that the aforementioned FIR came to be registered against Vinay Kumar (brother of the petitioner), Neeraj and Ashok with the allegations that they had been found travelling in a car bearing registration number HR-20AK-0539 make TATA Tiago from which 1Kg 480 Grams of Opium had been recovered. The petitioner is the registered owner of the aforesaid vehicle.

3. The petitioner had filed an application for superdari of the aforesaid vehicle before the Court of Additional Sessions Judge, Rohtak. However, the said application came to be dismissed vide order dated 21.07.2022 (Annexure P-3).

4. The aforesaid order is impugned in the present petition.

5. The Counsel for the petitioner contends that reasoning adopted by the Trial Court for rejecting the application for superdari was not sustainable. Merely because the recovery had been effected from the said vehicle would not be a reason enough to deny the claim of the petitioner, she being the registered owner. In fact, there was every likelihood that the vehicle would be damaged beyond repair as it was parked in open space and was subjected to the vagaries of the weather. He therefore contends that the vehicle in question may be released to the petitioner on superdari on an appropriate undertaking being furnished by her.

6. The Counsel for the State on the other hand has filed a reply by way of an affidavit of Mr. Sandeep Kumar, DSP, Meham, District Rohtak in the court today, which is taken on record. While referring to the said reply he contends that the vehicle in question had been used in the trafficking of narcotics. Therefore, it was not liable to be released to the petitioner on superdari even though she was the registered owner of the vehicle.

7. I have heard learned Counsel for the parties at length.

8. In ***Sunder Bhai Ambala Desai's case (supra)*** the Hon'ble Supreme Court has held as under:-

“ 15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with

the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Criminal Procedure Code, 1973 should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Criminal Procedure Code, 1973 are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court regard to such articles are implemented properly.

Adjourned for three weeks.

Order accordingly.

The aforesaid judgment has been followed by this Court in ***Gurbinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492***.

9. In view of the aforementioned judgments it is apparent that if a vehicle remains parked in the police station for a considerable period of time, it would become unfit for plying on the roads as keeping it parked in the sun and rain could damage its tyres, colour, machinery, battery as also

interiors of the vehicle. The value of the vehicle would also diminish in such a situation.

10. Thus the present petition is allowed. The vehicle bearing registration No.HR-20AK-0539 make TATA Tiago is ordered to be released to the petitioner/registered owner on superdari on general terms and conditions subject to the petitioner/registered owner executing personal bonds in the sum of Rs.4 lakh with one surety of the like amount to the satisfaction of the CJM/Duty Magistrate with an undertaking that as and when the Trial Court would require the said vehicle, she would produce the same before it at his own cost. She shall also not sell, transfer or alter the physical condition of the vehicle in any manner. Though she is not an accused in the instant FIR, nevertheless she shall also furnish an undertaking that she will not use or permit its use for commission of any offence and in case of involvement of the petitioner or the aforementioned vehicle in any case it would be open to the prosecution to move an application for cancellation of the order releasing the vehicle on superdari.

11. Disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

January 15, 2024
Vinay

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