

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1450-2024
Reserved on:27.08.2024
Pronounced on: 30.08.2024

Guddi ...Petitioner
Versus
State of Haryana ...Respondent

ANOOP CHITKARA, J.

1. Aggrieved by the dismissal of the application for release of the car bearing registration No.HR 85-E-5555 on superdari, seized for transporting the prohibited substance under the NDPS Act, the petitioner, claiming to a power of Attorney holder of her husband, who is its registered owner, has come before this Court under S. 397 & 401 of CrPC, 1973, seeking its release.

2. The petition was filed after the CrPC, 1973 had already been repealed on June 30, 2024, and stands substituted by BNSS, 2023, with effect from 01 July 2024. Given this, the present petition is treated as a petition under S. 438 of BNSS, 2023.

3. The Petitioner's counsel prays for bail by imposing any stringent conditions.

4. The State has opposed the bail. It is appropriate to refer to para 4 of the reply, which reads as follows:

“That on checking of the antecedents of accused-applicant, she was found involved in several criminal cases of same modus-operandi and in case the said vehicle would be released on the superdari, the accused-applicant may use the vehicle in question for transporting the contrabands. It would be relevant to mention here that all the family of the accused-applicant is involved in criminal activities and have no respect for the courts of law hence the present petition is liable to be dismissed and the order dated 11.07.2024 passed by the Ld. Court of ASJ/Ambala are liable to be maintained. List of cases registered against the accused/applicant and her family members is annexed as Annexure R-1 to R-5 for the kind perusal of this Hon’ble Court.”

5. In Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283, Hon’ble Supreme Court holds,

[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.

6. Given above, the impugned order dated 11.07.2024 passed by the Additional Sessions Judge, Ambala, whereby the court rejected the vehicle's release because of its likely misuse and after its release for usage in transporting drugs, is quashed and set aside.

7. The release of the vehicle mentioned above shall be subject to the petitioner furnishing a personal indemnity bond to the concerned court, with a signed copy to the concerned SHO. In the indemnity bond, the petitioner shall undertake to pay the State, in case so ordered in these or any related proceedings, the amount as per the vehicle's value as per the valuation report quantifying the vehicle's current market value as assessed by a valuer. The petitioner shall get the vehicle's valuation done at their expense, and the concerned police officers/other officials shall permit the valuer to inspect the vehicle without any delay or obstruction and shall behave decently and respectfully with the valuer and the petitioner. Without the valuation report, the bond amount shall be the vehicle's purchase price by its registered owner.

8. The concerned court, to order the release of the vehicle to the petitioner after verifying the registration certificate and ascertaining that the petitioner is the registered owner of the vehicle, sought to be released. If the vehicle is found to be hypothecated, then information about its release also be sent to the concerned financial agency. The relevant financial agency should also be notified about the vehicle's release if it turns out to be a hypothecated vehicle before release. After verifying that the petitioner is the vehicle's registered owner and examining the registration certificate and hypothecation, the concerned court will order the vehicle's release to the petitioner.

9. Immediately after its release, the petitioner will install a GPS in it for the time the vehicle remains registered in his name and shall keep the communication device operational and in working condition until he remains the registered owner of the above-

captioned vehicle.

10. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
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Whether speaking/reasoned: Yes
Whether reportable: No