

2024:PHHC:118422



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

261

CRM M-52877 of 2023

Date of Decision: 09.09.2024

Khurshid

...Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Imityaz Hussain, Advocate, for the petitioner.

Mr. Praveen Bhadhu, AAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to set aside the order dated 04.03.2023 (Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, Ferozepur Jhirka and the order dated 05.09.2023 (Annexure P-3) passed by the Court of Additional Sessions Judge, Nuh, whereby, the application for releasing the vehicle bearing registration No. RJ-32GB7535 Chasis No. MBUWEL4XFU0236176 Engine No. SLT4FU220770 of the petitioner was ordered to be dismissed.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in a case FIR No. 457 dated 04.12.2022 under Section 13(2) of the Haryana Gauthansh Sanrakshan and Gauthansvardhan Act, 2015 (hereinafter to be referred as 'the

HGS Act’) and Section 11 of the Prevention of Cruelty to Animal Act, 1960, registered at Police Station Ferozepur Jhirka. After the registration of the FIR, the petitioner applied for grant of concession of anticipatory bail, which was allowed by the Court of Sessions Judge, Nuh, vide order dated 15.12.2022. Learned counsel for the petitioner further contends that in the present case, the vehicle of the petitioner bearing No. RJ-32-GB-7535 was taken into possession by the police on 04.12.2022 and was ordered to be confiscated on 13.02.2023 as per the orders of Sub-Divisional Magistrate, Ferozepur Jhirka, passed under Section 17(3) of the HGS Act. Learned counsel further submits that the petitioner is the special power of attorney holder of the owner of the vehicle. Moreover, the vehicle was also seized from the petitioner and he was entitled to get the vehicle released in his favour.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the vehicle may be involved in the same offence again. It is further contended that even keeping in view the stringent provisions of HGS Act 2015, the vehicle may not be released in favour of the present petitioner.

4. I have heard learned counsel for the parties and perused the record.

5. There is no dispute that the petitioner is the special power of attorney holder of owner of the vehicle bearing registration

No. RJ-32-GB-7535, which is lying in the police station in FIR No. 457 dated 04.12.2022 under Section 13(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Section 11 of the Prevention of Cruelty to Animal Act, 1960 (Annexure P-1). Even, no useful purpose is going to be served by keeping the seized vehicle in police station for a long period, which is most likely to be deteriorated, if left unattended.

6. Moreover, the prayer made by the petitioner has been declined in terms of the provisions laid down under Section 17 of the 2015 Act whereas the vires thereof were assailed before this Court by way of Civil Writ Petition No. 19153 of 2016, titled "**Manipal Versus State of Haryana and others**", which was disposed off vide order dated 30.05.2017 and the same reads as under:-

"The petitioner has approached this Court seeking to challenge Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (for short, "the Act") which provides for confiscation of the vehicle used in any offence committed under the Act.

Learned counsel for the State submitted that the process for amendment of the Act is in progress and he has instructions from Dr. Rajbir Vats, Gaushala Development Officer, Department of Animal Husbandry & Dairying, Panchkula to state that the vehicle in question namely, UP-11AT-1273 Ashoka Leyland Pick Up may be released to the petitioner on superdari to the satisfaction of Judicial Magistrate Ist Class, Yamuna Nagar.

In view of the stand taken by learned counsel for the State, learned counsel for the petitioner submitted that the main writ petition can also be disposed of in case the State is in process of making amendment in the Act vires of which is under challenge.

After hearing learned counsel for the parties, the present petition is disposed of at this stage as regards vires of Section 17 of the Act is concerned, as amendment thereof is under consideration.

In view of the stand taken with reference to release of vehicle, it is directed that the same shall be released to the petitioner on superdari subject to the satisfaction of Judicial Magistrate Ist Class, Yamuna Nagar."

7. As per information provided by the learned State Counsel, no such exercise of carrying out the amendment of the 2015 Act has been concluded so far and under similar circumstances, Co-ordinate Bench of this Court, vide order dated 14.01.2020 in CRM M-14463 of 2019 ***Azhar Husain Vs. State of Haryana***, has already ordered to release the vehicle allegedly involved under the 2015 Act on superdari. Relevant paras of the said order dated 14.01.2020 are reproduced hereunder:-

"After hearing learned counsel for the parties, the present petition is allowed in view of the order dated 14.11.2017 passed in CRR-4013-2017 and the impugned orders dated 02.01.2019 and 11.06.2018 are hereby set aside.

The truck in question be released on superdari in favour of the registered owner, on furnishing superdari

bond, subject to the satisfaction of the trial Court/Duty Magistrate/SDJM concerned."

9. Thus, in the humble opinion of this Court, upon consideration of the aforesaid facts, it may be appropriate to order release of seized vehicle on superdari in favour of the special power of attorney holder of the registered owner.

10. Resultantly, the petition is allowed and the impugned order dated 04.03.2023 (Annexure P-2) passed by the Court of Sub Divisional Judicial Magistrate, Ferozepur Jhirka and the impugned order dated 05.09.2023 (Annexure P-3) passed by the Court of Additional Sessions Judge, Nuh, are hereby set aside. The seized vehicle is hereby directed to be released on superdari to the petitioner, on furnishing superdari bonds, subject to the satisfaction of the Trial Court/Duty Magistrate/SDJM concerned.

11. The petitioner shall not sell the vehicle any further and shall maintain the vehicle in the same condition. Still further, the petitioner shall produce the vehicle before the trial Court, as and when directed by the Court.

09.09.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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