

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2719-2023
Date of decision: 10.01.2024

Mubarik Khan
...Petitioner

Versus

State of Haryana
...Respondent

Present:- Mr. Manvinder Sindhu, Advocate
for the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
392	24.12.2020	Uchana, District Jind.	15(c), 15(3)/18/25, 27-A/29, 59(2) of Narcotics Drugs and Psychotropic Substances Act, 1985 [NDPS Act] and later on added Sections 7, 7A and 8 of Prevention of Corruption Act and Sections 120-B, 192, 196, 201, 202, 203, 217, 409, 166-A IPC.

Aggrieved by dismissal of the application for release of the vehicle i.e. Scorpio car No.MP-09-CV-4289 seized in the FIR captioned above for transporting the prohibited substance under Section 15 of NDPS Act, the petitioner claiming to be its registered owner, has come up before this court, seeking its release.

2. Petitioner's counsel prays for release of vehicle by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial Court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days from today and undertakes to disconnect all other mobile numbers and have no objection for tracking the vehicle through GPS.

3. State counsel objects the petition on the ground that the vehicle was found used two times for transporting contraband and as such, prays for its dismissal.

4. 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.”

5. Given above, the impugned order dated 2.9.2023 passed by Additional Sessions Judge, Jind, whereby the Court had rejected the release of the vehicle because the NDPS Act creates a bar in its release for usage in transporting drugs, is quashed and set aside. 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.

6. The release of the vehicle, mentioned above, shall be subject to the petitioner furnishing an indemnity bond to the concerned court's satisfaction with a signed copy on original stamp papers. In the indemnity bond, the petitioner shall undertake to pay to the State, in case so ordered in these or any related proceedings, the value of the vehicle as per the valuation report quantifying the vehicle's current market value as assessed by a valuer, along with interest at the rate of 6% per annum, compoundable annually. The petitioner shall get the vehicle's valuation done at his own expenses, and the concerned police officers shall permit the valuer to inspect the vehicle without any delay or obstruction and shall behave with the valuer and the petitioner decently and respectfully.

7. The petitioner's counsel voluntarily agreed, on instructions, that in case this court orders the vehicle's release, the petitioner will get a GPS installed in it, for the time the vehicle remains registered in his name. This order is subject to the condition that the petitioner shall purchase a GPS and install it on the vehicle in the police station itself and shall keep the communication device operational and in working condition until he remains the registered owner of the above captioned vehicle or till the conclusion of

trial.

8. The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier.

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

January 10, 2024
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.