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(266) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2688-2023
Date of Decision: 18.04.2024

MUBARIK KHAN

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Manvinder Sidhu, Advocate
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated 02.09.2023 passed by the Addl. Sessions Judge, Jind whereby the application filed by the petitioner for releasing his vehicle i.e. Scorpio bearing Registration No.MP-09-CV-4289 on superdari has been dismissed.

2. The brief facts of the case are that an FIR No.388 dated 18.12.2020 under Section 15 of the NDPS Act, 1985, P.S. Uchana was registered when 414 Kgs of poppy husk was recovered from one Jagrup son of Amar Singh.

3. During the course of investigation, petitioner-Mubarik Khan was joined in investigation and arrested on 26.02.2021. He suffered his disclosure statement and admitted that his vehicle Mahindra Scorpio bearing Registration No.MP09-CV-4289 had been used for drug trafficking and that the said vehicle had been purchased by him by the sale proceeds accumulated by him by selling illicit narcotic/contraband substances.

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4. The report under Section 173 Cr.P.C. was presented against some of the accused. Thereafter, further investigation was carried out which culminated in a report under Section 173 Cr.P.C. against a child-in-conflict with law namely, Abhishek.

5. Accused Irfan Khan who was in custody in FIR No.392/2020, P.S. Uchana was joined in the investigation. The report under Section 173(8) Cr.P.C. was presented against Irfan Khan as well.

6. Meanwhile, as it had been found that the Scorpio in question had been recovered in FIR No.392 dated 24.12.2020, U/s 15(c), 15(3)/18/25, 24-A/29, 59(2) of the NDPS Act, 1985 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, P.S. Uchana, District Jind as well, an application was moved for superdari of the said vehicle and came to be allowed by this Court vide order dated 10.01.2024 passed in CRR-2719-2023.

7. A second application was moved for releasing the vehicle on superdari in FIR No.388 dated 18.12.2020, U/s 15C, 27A, 29-61-85 NDPS Act, P.S. Uchana, District Jind as well which came to be dismissed vide order dated 02.09.2023 by the Court of Addl. Sessions Judge, Jind.

8. The said order is under challenge in the present petition.

9. The learned counsel for the petitioner contends that the vehicle in question was taken into possession in two different cases and is currently parked at Police Station Uchana, District Jind. The vehicle had been purchased after obtaining a loan as was evident from the EMIs being paid by the petitioner. If the vehicle was not released on superdari its condition was likely to deteriorate on a day-to-basis. The petitioner undertaken not to

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change the colour of the vehicle nor sell it during the pendency of the Trial and would also produce it as and when required. He was ready and willing to furnish a heavy surety/guarantee for the release of the vehicle on superdari. Even otherwise, in FIR No.392 dated 24.12.2020 which is the other case in which the vehicle had been found to be involved it had already been released on superdari. Reliance is placed on the judgments in the cases of **Rahul Kumar @ Rai Vs. State of Punjab 2019(3) Law Herald 2266** and **Gurbinder Singh @ Shinder Vs. State of Punjab 2016(4) RCR (Criminal) 492.**

10. A reply dated 16.04.2024 by way of an affidavit of Naveen Sindhu, HPS, Deputy Superintendent of Police, Uchana, District Jind has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that since the vehicle was used in the crime the vehicle was not liable to be released on superdari. He, however, concedes that in FIR No.392 dated 24.12.2020 this Court had passed an order releasing the vehicle on superdari on the imposition of certain conditions.

11. I have heard learned Counsel for the parties.

12. 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

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that the rules framed by the High Court regard to such articles are implemented properly.

Adjourned for three weeks.

Order accordingly.

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

14. In view of the aforementioned judgments it is apparent that if the vehicle remains parked in the police station for a considerable period of time, it would become unfit for being plying on the road 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.

15. Thus the present petition is allowed. The vehicle bearing registration No.MP-09-CV-4289 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, he would produce the same before it at his own cost. He shall also not sell, transfer or alter the physical condition of the vehicle in any manner. The petitioner shall also furnish an undertaking that he 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

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would be open to the prosecution to move an application for cancellation of the order releasing the vehicle on superdari.

16. Disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

18.04.2024
JITESH

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