

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 64773 of 2023 (O&M)
Reserved On: 15.02.2024
Pronounced On: 19.02.2024

Sher Mohammad @ Sher Mohd.
..... Petitioner
Versus
State of Haryana
..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By: Mr. Arjun Atri, Advocate,
for the petitioner.

Mr. Rajiv Sidhu, Deputy Advocate General, Haryana
for the respondent-State of Haryana.

HARKESH MANUJA, J.

The petitioner, by way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (**for short “the Cr.P.C.”**) seeks quashing of order dated 25.10.2023 (Annexure P-3) passed by learned Additional Sessions Judge, Nuh in CRR No. 223 of 2023, titled “*Sher Mohammad Versus State of Haryana*”, upholding the order dated 16.10.2023 (**Annexure P-2**) passed by learned Judicial Magistrate Ist Class, Nuh, whereby an application filed at the instance of petitioner for release of vehicle (Mahindra Bolero Pickup) bearing Registration No. HR-74B-8652 (**for short “the seized vehicle**) on *sapurdari* in case FIR No. 88 dated 17.05.2023 under Sections 5/13(2) & 17 of The Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (**for short “the 2015 Act”**), Section 11-59-60 of Animal Cruelty Act and Sections 279 & 336 of Indian Penal Code, 1860, registered at Police Station Rozka Meo, District Mewat,

was dismissed.

[2] As per FIR (supra), it has been, *inter alia*, alleged that the petitioner–Sher Mohammad @ Sher Mohd. and his co-accused have been found to be involved in the business of cow slaughtering, while using the seized vehicle.

[3] The petitioner being the owner of the seized vehicle filed an application for release thereof on *sapurdari*, which was dismissed by learned Judicial Magistrate Ist Class, Nuh vide order dated 16.10.2023. The petitioner challenged the said order by filing CRR No. 223 of 2023 which was dismissed by learned Additional Sessions Judge, Nuh, vide order dated 25.10.2023 on the ground that no Court shall have jurisdiction to release the seized vehicle due to the bar imposed by Section 17(3) of the 2015 Act. Hence, the present petition.

[4] Learned counsel for the petitioner argued that the petitioner is the registered owner of the seized vehicle, but the same was not involved in the occurrence; however, the same is in possession of the police since 17.05.2023, which would thus get damaged. Learned counsel while relying upon a judgment dated 14.01.2020, rendered by Co-ordinate Bench in *CRM-M-14463-2019*, titled “*Azhar Husain Versus State of Haryana*”, submitted that in the similar circumstances, the petition was accepted and the vehicle of the owner-accused was directed to be released on *sapurdari*.

[5] Learned State Counsel has opposed the prayer made in the petition, in terms of reply filed by way of affidavit dated 12.02.2024 of Sh. Surender Kumar, HPS, Deputy Superintendent of Police, Nuh, District Nuh, In the said reply at para-8 of preliminary submissions, it is stated that the

petitioner is a hard core criminal and is involved in eleven (11) more cases, though acquitted in six (06) cases; however, learned State Counsel does not raise any serious objection to release the vehicle in view of order dated 14.01.2020 passed in ***Azhar Husain's case (supra)***.

[6] After hearing learned counsel for the parties and going through the paper-book / relevant record, I find substance in the submissions made on behalf of the petitioner.

[7] In the present case, the seized vehicle is lying in the police station since 17.05.2023, i.e. for the last about nine months, which may outlive its utility with the passage of time. No useful purpose will be served by keeping the seized vehicle idle in police station for a long period as the same will become junk. The offences mentioned in the FIR (*supra*) are triable by the Magistrate, which may take long time.

[8] Moreover, the prayer made by the petitioner has been declined in terms of the provisions laid down under Section 17 of the 2015 Act and 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. ”

[9] 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 ***Azhar Husain's case (supra)***, has already ordered to release the vehicle allegedly involved under the 2015 Act on *sapurdari*. 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.”

[10] In the humble opinion of this Court as well as considering the aforesaid facts, it may be appropriate to release the seized vehicle on *sapurdari* in favour of its registered owner.

[11] Consequently, the impugned orders dated 16.10.2023 & 25.10.2023 (P-2 & P-3 respectively) passed by the Courts below are hereby set aside. The seized vehicle is hereby directed to be released on *sapurdari* to its registered owner–petitioner, on furnishing *sapurdari* bonds, subject to the satisfaction of the trial Court / Duty Magistrate / SDJM concerned.

[12] **Disposed off** accordingly.

February 19, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>