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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24.04.2024

\+ **CRL.M.C. 1820/2022 & CRL.M.A. 20194/2022**

ANIL KUMAR ..... Petitioner

Through: Mr.R.K. Tarun, Ms.Aditi Shivadhatri, Capt. Subedita Rani and Mr.R.R. Bharati, Advs.

versus

STATE & ANR. ..... Respondents

Through: Ms.Priyanka Dalal, APP with SI Sandeep Kumar
Mr.Harikrishan, Sr. Assistant with Mr.Rahul Sharma ASO from the Excise Department.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 29.03.2022 passed by the Financial Commissioner, Delhi in Case No.189/2021, titled ***Shri Anil Kumar v. Asst. Excise Commissioner, Govt of NCT of Delhi***, directing the Vehicle (Bus) of the petitioner herein to be released on *Superdari* subject to the condition of the petitioner furnishing Rs.2 lacs surety and an undertaking that the Bus shall not be used for similar offence.

2. It is the case of the respondents that Bus bearing no. DL-1PC-6188 owned by the petitioner was apprehended and seized by the police officials of Police Station: Alipur, Delhi near Singhu Border carrying 54 cartons having 372 bottles, 72 halfs, and 96 quarters of illicit liquor concealed in the hollow partition in the base of the bus. FIR No.466/2020 was registered at Police Station: Alipur, Delhi under Sections 33/58(d) of the Delhi Excise Act, 2009 (in short, 'Act').

3. The petitioner herein filed an application seeking release of the vehicle, stating therein that the vehicle is the main source of his livelihood and he had taken a loan and is paying monthly instalments to the bank. The said representation was disposed of by the Assistant Excise Commissioner vide an Order dated 15.04.2021, directing the release of the vehicle subject to the petitioner furnishing surety in the form of a fixed deposit in favour of the learned Deputy Commissioner (Excise) of a value of 60% of the insured amount of the Vehicle/Bus.

4. Aggrieved of the said Order, the petitioner filed an appeal, which was disposed of by the Excise Commissioner vide an Order dated 02.11.2021, upholding the said condition for the release of the Vehicle.

5. Still aggrieved, the petitioner preferred an appeal under Section 72 of the Act before the Financial Commissioner, which has been disposed of by the learned Financial Commissioner by way of the Impugned Order.

6. The learned counsel for the petitioner submits that while the petitioner is ready and willing to furnish an indemnity bond of Rs.2 lacs, however, he is not in a position to give the undertaking as required, inasmuch as he apprehends that the same can be misused at a future date, as the vehicle in question is a commercial vehicle. He submits that the petitioner, due to his poor pecuniary condition, is also not in a position to give cash security of an amount of Rs. 2 lakhs.

7. On the other hand, the learned counsel for the respondents submits that, in the present case, illicit liquor of a large quantity was found concealed in the Vehicle in question, therefore, complicity of the petitioner in the same stands established. He has also been prosecuted for the offence under Section 52(2) of the Act. She submits that the conditions as imposed by the Financial Commissioner, are reasonable and do not deserve any interference from this Court. She submits that, in fact, the vehicle is liable to be confiscated under Section 59 of the Act.

8. The learned counsel for the respondents has also handed over a copy of the Status Report. Let the same be taken on record.

9. I have considered the submissions made by the learned counsels for the parties.

10. As noted hereinabove, the petitioner is facing the prosecution under Section 52(2) of the Act. The issue before this Court is not to determine the merits of that prosecution but only to consider whether the vehicle in question can be released on *Superdari* to the petitioner,

and if so, on what conditions, and whether the conditions which have been imposed by the Financial Commissioner by the Impugned Order, deserve any modification.

11. It is also important to note that till date, there is no Order passed by the competent authority for confiscating the vehicle in question. The Assistant Excise Commissioner, in the Order dated 15.04.2021, has also recorded the statement made by the IO to the effect that the vehicle is no longer required for investigation and can be released on *Superdari*. The vehicle was seized on 06.10.2020.

12. In my view, the purpose of seeking surety while releasing the same on *Superdari* is only to ensure that the vehicle is produced before the learned Trial Court as and when directed. In ***Sunderbhai Ambalal Desai v. State of Gujarat***, (2002) 10 SCC 283, the Supreme Court directed that where a vehicle is seized, 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.*" It held that it is of no use to keep such vehicles seized at the police stations for a long period.

13. In the facts of the present case, there is no opposition to the release of the vehicle in question on *Superdari* to the petitioner. The only issue is of the reasonable conditions that should be imposed on the petitioner for the same. In my opinion, the object of releasing the vehicle on *Superdari* can be achieved by directing the petitioner to give a surety of Rs.1 lac. As far as the undertaking that the bus shall

not be used for similar offence for a period of one year, in my opinion, there is no warrant in law for the said condition to be imposed.

14. The impugned order records that in case the vehicle is not found to be involved in any other case of a similar nature for one year from its release, the surety shall stand discharged. The said condition shall continue to operate.

15. The petition is disposed of in the above terms. The pending application also stands disposed of being rendered infructuous.

NAVIN CHAWLA, J

APRIL 24, 2024/ns/AS

Click here to check corrigendum, if any