

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

Case: Petition u/s 561-A Cr.P.C. No.240/2016 & MP No.01/2016

Date: 23.08.2016

Manpreet Singh	Vs.	State of J&K through SHO Police Station Banihal
----------------	-----	---

Coram:

Hon'ble Mr. Justice B. S. Walia

Appearing counsel:

For petitioner(s) : Mr. Rajnesh Oswal, Advocate.
For respondent(s) : Mrs. Deepika Mahajan, Dy. AG.

Whether to be reported in
Press/Media : Yes/No

Whether to be reported in
Digest/Journal : Yes

Oral:-

1. Challenge is to condition No.1 imposed by the learned trial Court in the impugned order requiring the petitioner to deposit 50% of the value of the vehicle by way of Bank Guarantee for the release of the vehicle involved in the commission of the offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter for short to be referred to as 'NDPS Act'). The same has been challenged to be an onerous condition on the ground that in the absence of there being any specific provision under the NDPS Act for the release of the vehicle, it would be the provisions of

Section 516-A Cr.P.C., which would be applicable. Secondly, that the petitioner, who is the owner of the vehicle in question, is not an accused in the case under the NDPS Act; thirdly, that the petitioner had purchased the vehicle on the basis of a loan from Shri Ram Transport Finance Company Ltd., for which, he has to not only pay interest on the loan amount but also has to repay instalments for the discharge of the loan. It has further been contended that the petitioner is a person belonging to the lower strata of society and is eking his living by plying the vehicle through a driver hired by him and in case the impugned condition is not set aside, it would not be possible for the petitioner to raise funds to furnish the Bank Guarantee, besides the petitioner would not be able to operate the vehicle and would lose his livelihood which would have a cascading effect on his family which is dependent upon the earnings of the petitioner from the plying of the vehicle in question.

2. Learned counsel for the petitioner relies upon the decision in case titled as **Shri Deshraj Vs. State of Rajasthan** reported in **Law Finder Doc Id # 551582**. In **Deshsraj's** case (supra), the Rajasthan High Court held that the condition imposed by the trial Court requiring the petitioner to furnish Bank Gurantee

appeared to be onerous, that although the petitioner was a registered owner, but he was not an accused in the criminal case and even otherwise, if the vehicle was not released and remained at the Police Station, it would be subject to decay and decomposition. On the afore mentioned reasoning, the Rajasthan High Court allowed the petition and set aside the condition requiring furnishing of Bank Guarantee and instead required the petitioner to submit supurdaginama of the requisite amount with two sureties for the amount in question, besides complying with the other conditions imposed by the trial Court for the release of the vehicle in question.

3. Learned counsel for the petitioner states that the petitioner would furnish supurdaginama of the amount equivalent to 50% of the value of the vehicle with two sureties of the afore said amount and would also comply with the other conditions as imposed by the trial Court for the release of the vehicle in question.
4. Learned Dy. AG states that the same should be subject to the condition that the seized vehicle be released to the petitioner only by way of interim custody as registered owner and subject to his filing of an undertaking to the satisfaction of the trial Court that

he would not create any third party rights in the vehicle in question during the trial and would also undertake to bind himself to the orders to be passed by the trial Court on the conclusion of the trial.

5. The petition is allowed. The vehicle be released to the petitioner on his fulfilling the following conditions:-

i) the petitioner would furnish supurdaginama of the amount equivalent to 50% of the value of the vehicle with two sureties of the afore said amount; and

ii) the petitioner would also comply with the other conditions as imposed by the trial Court for the release of the vehicle in question.

iii) the petitioner would file an undertaking to the satisfaction of the Trial Court that he would not create any third party rights in the vehicle in question during the trial and would also undertake to bind himself to the orders to be passed by the trial Court on the conclusion of the trial.

6. Writ Petition along with connected MP is allowed in afore mentioned terms.

(B. S. Walia)
Judge

Jammu
23.08.2016
Narinder