

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Revision Application No.S-10 of 2025

Applicant: Muhammad Ashraf s/o Ahmed Gujjar
Through Mr. Tarique Mehboob advocate.

Respondents: 1. Learned Additional Sessions Judge-I/MCTC,
Sanghar.
2. The State.
Through Mr. Ghulam Abbas Dalwani, DPG

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Date of hearing: 17.06.2025.

Date of Order: 17.06.2025.

ORDER

Jan Ali Junejo, J.— This Criminal Revision Application, under Sections 435/439 read with Section 561-A, of the Code of Criminal Procedure, 1898 (Cr.P.C.), has been filed by the Applicant, challenging the Order dated 12.02.2025 (hereinafter referred to as the “*Impugned Order*”), passed by the learned Additional Sessions Judge-I/MCTC, Sanghar (hereinafter referred to as the “*Trial Court*”), in Sessions Case No.166 of 2023 arising out of the F.I.R. No.46 of 2022 under Sections 302/114/34, P.P.C. of P.S. Mangli (District Sanghar) whereby application for change of surety filed on behalf of the Applicant was dismissed.

2. The brief facts of the case, as emerging from the record, are that complainant Mian Khan son of Ahmed Khan lodged FIR No.46 of 2022 dated 14.08.2022 at Police Station Mangli, alleging that his grandson Ali Hassan son of Muhammad Pervaiz Raza was murdered by accused Abdul Wahab, Rukhsar Sarwar, and Tanzeel ul Rehman on the instigation of Abdul Wahab. The incident occurred at Chak No.45, District Sanghar, where the deceased had gone along with the accused persons in a Double Cabin vehicle bearing Registration No.GTC-9969. After investigation, challan was submitted before the Trial Court. The Trial Court, vide judgment dated 27.07.2024, acquitted

accused Rukhsar Ahmed and kept the case on dormant file against absconder accused Abdul Wahab and Tanzil-ul-Rehman, who were declared as Proclaimed Offenders. The applicant, being the owner of the subject vehicle (Toyota Hilux bearing Registration No.GTC-9969, moved a Miscellaneous Application under Section 516-A Cr.P.C. for restoration of the vehicle on Superdari. The Trial Court allowed the same vide order dated 20.09.2024, subject to furnishing solvent surety in the sum of Rs.30,00,000/- (Thirty Lac). Thereafter, one Muhammad Ashraf son of Fazal Din stood as surety by furnishing solvency certificate of his house, and the vehicle was released to the applicant/owner. Subsequently, the surety Muhammad Ashraf son of Fazal Din, due to his dire need to sell his house, filed an application for return of surety documents, which was dismissed by the Trial Court vide order dated 07.09.2024. Thereafter, the applicant filed an application for change of surety documents dated 07.02.2025, offering to submit the original registration documents of the subject vehicle as surety in place of the existing solvency certificate. However, the Trial Court dismissed this application vide the Impugned Order dated 12.02.2025.

3. The learned counsel for the applicant has argued that the Impugned Order is opposed to facts, law, justice and equity, being based on irregularity and illegality. He further argued that the Trial Court failed to consider the arguments and case law produced on behalf of the applicant. It was submitted that the present surety is in dire need of money and wishes to sell his house, hence requires return of his solvency certificate. The counsel argued that surety cannot be retained for an indefinite period, particularly after the judgment has been passed in the case. The learned counsel relied upon the case of ***Nafees Iqbal v. The State (2008 MLD 1107)*** and contended that the applicant is ready to furnish the original registration documents of the subject vehicle as fresh surety, which would be more appropriate and secure than the existing arrangement. It was submitted that the Trial Court's direction to submit a fresh application and furnish additional surety of equivalent value is without legal

justification and amounts to double surety for the same vehicle. Lastly, the learned counsel has prayed for allowing the present Criminal Revision Application.

4. The learned D.P.G. has supported the Impugned Order and contended that since the case against two accused persons is still pending on dormant file and they are proclaimed offenders, the vehicle may be required for production during trial upon their arrest or surrender. It was argued that if the present surety is discharged, it would be difficult to ensure production of the vehicle before the Court when required. The learned D.P.G. submitted that the Trial Court has rightly dismissed the application as the matter is still sub-judice and the case property cannot be released from the Court's control. Lastly, the learned DPG prayed for dismissal of the present Criminal Revision Application.

5. I have carefully considered the arguments advanced by both parties and have thoroughly examined the material available on record. Upon perusal, it is evident that the judgment dated 27.07.2024, passed by the learned Trial Court, is entirely silent with respect to the subject vehicle. The judgment neither contains any property order concerning the disposal of the case property nor issues any specific directions regarding its custody or production. While the case has been consigned to the dormant file in relation to the absconding accused, no timeline or direction has been provided concerning the subject vehicle. The Trial Court appears to have taken the view that returning the surety to the applicant might jeopardize the future production of the vehicle. However, this apprehension is unsupported by the record. On the contrary, the applicant had expressed willingness to submit the original registration documents of the vehicle as surety. Despite this reasonable and lawful offer, the Trial Court rejected the request without assigning cogent or legally tenable reasons. Furthermore, the direction issued by the Trial Court, requiring the applicant to file a fresh application and furnish new surety of equivalent value amounting to Rs.30,00,000 in lieu of the existing surety, is patently erroneous

and devoid of any legal justification. A surety cannot be withheld indefinitely, particularly when the applicant is willing to deposit the original registration documents of the same vehicle. These documents could be retained by the Court, subject to a formal communication to the concerned Motor Vehicle/Registering Authority, to ensure the vehicle's availability until the final disposal of the case. The legal principle enunciated by this Court in case of ***Nafees Iqbal v. The State (2008 MLD 1107)*** is directly applicable to the present case, wherein it was held that: *"Keeping in view the above submissions of both the learned counsel, I have observed that the purpose of binding the applicant to produce the subject vehicle can be achieved after a direction is issued to the concerned Registering Authority of motor vehicles to maintain status-quo and not to transfer the said vehicle in the name of any person while the undertaking of applicant be kept on record. In such type of matter when the applicant has already suffered at the hands of criminal, he should not be burdened further and should not be treated like the criminal. In such a situation, the impugned order, dated 26-3-2007 passed by learned District and Sessions Judge, Karachi (South) is hereby set aside with direction that the applicant to submit an undertaking and P.R. Bond before the Court of said District and Sessions Judge, Karachi (South) and the said learned District and Sessions Judge is directed to return the document and to issue directions to the concerned Registering Authority of motor vehicles not to transfer the said vehicle in the name of anybody till decision of the matter".* The aforementioned case law was duly cited before the learned Trial Court. In light of the foregoing analysis, I am of the considered view that the Impugned Order passed by the learned Trial Court is legally unsustainable, patently erroneous, and improper. It, therefore, warrants interference and correction by this Court in the interest of justice.

6. For the reasons recorded above, this Criminal Revision Application is allowed. The Impugned Order dated 12.02.2025 passed by the learned Additional Sessions Judge-I/MCTC, Sanghar is hereby set aside. The Trial Court is directed to accept the original registration documents of the subject

vehicle i.e., Toyota Hilux bearing Registration No.GTC-9969, Engine No.312820242, Chassis No.LN106006423, Model 1992, as surety in place of the existing solvency certificate of the house, subject to the following conditions:

- (i) The Applicant is directed to submit the original registration book/documents along with the complete file of the subject vehicle i.e. Toyota Hilux bearing Registration No. GTC-9969, Engine No.312820242, Chassis No. LN106006423, Model Year 1992, before the Trial Court. The said documents shall be retained in the safe custody of the Nazir of the Court.
- (ii) The Trial Court shall issue letter to the concerned Motor Vehicle/Registering Authority, directing it not to transfer, dispose of, or otherwise alter the ownership status of the subject vehicle until the final disposal of the case. The Authority shall also be instructed to make a corresponding entry in its official records, clearly stating that no transfer or registration shall be effected in favour of any other person unless specifically permitted by an Order or No Objection Certificate (NOC) issued by the Trial Court, and upon production of the original file of the vehicle.
- (iii) The Applicant shall execute a Personal Recognizance (P.R.) Bond/affidavit undertaking that he shall not dispose of the said vehicle in any manner and shall produce the same before the Court whenever required during the proceedings; and
- (iv) Upon fulfillment of the above conditions, the existing surety documents (solvency certificate of house) shall be returned to Muhammad Ashraf son of Fazal Din, and a letter for *release of the mortgage entry* shall be issued to the concerned authority.
- (v) The Trial Court is directed to implement this Order within thirty (30) days of its receipt under intimation to this Court through Additional Registrar of this Circuit Court.

JUDGE

“Saleem”

