

# IN THE HIGH COURT OF SINDH KARACHI

Present: Mr. Justice Dr. Syed Faiz ul Hassan Shah

## **Crl. Revision Application No.102 of 2025**

Applicant: Ishfaq Ahmed son of Fazal Wadood  
through Mr. Muhammad Shahid, Advocate

The State: Through Mr. Qamaruddin Nohri, DPG

Date of hearing: 10.07.2025

Date of order: 10.07.2025

## **ORDER**

**Dr. Syed Fiaz ul Hassan Shah, J.-** Through this Crl. Revision Application, the Applicant has impugned the order dated 22.02.2025 passed by learned Additional Sessions Judge-X, Karachi West; whereby Crl. Misc. Application No.54/2025 filed by the Applicant was dismissed.

2. The facts are incorporated in the FIR and impugned and do not need to be re-produced for the purpose of deciding the present application.
3. Heard the counsel for the parties as well as the learned Additional Prosecutor General and perused the record with their assistance.
4. I have considered the record file by the learned counsel for the applicant, in response to the first question raised in the impugned Order regarding Route permit, the learned Counsel draw my attention towards Annexure B/3 (page 41 of the Court file) a certificate Public career part B issued by the Provincial Transport Authority, Government of

Balochistan and on the said Route Permit, it has been endorsed validity up to September 2027 under signature of Secretary Transport Authority, Sindh, Karachi. The learned Counsel claims that a driving license has been provided to the IO who is present in Court has confirmed that the Driving License of the Applicant has now been provided and it has sent for verification. On Court query, the I.O. states that at the time of impugned Order dated 22.02.2025 the Applicant has not provided such license. However, the Counsel failed to give an explanation about the third question raised in the impugned Order with regard to Fitness Certificate of the Vehicle in question.

5. The provision of Section 516-A of the Coda of Criminal Procedure enables the Court to make an appropriate order for proper custody only when the property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence is produced before the Court during any inquiry or trial. Section 516-A of the Coda of Criminal Procedure would, therefore, have no application unless the property is produced before the Court during an inquiry or trial. There is nothing in the present case to show that the vehicle seized which formed the subject matter of the offence charged against the Applicant was produced before the learned Magistrate. As a matter of fact, the facts on record clearly indicate that such vehicle was not at any time produced before the learned Magistrate.
6. To determine the conferment of jurisdiction upon the learned Magistrate under Sections 516-A and 523, Cr. P.C., to consider the request for order the release of the truck in question, upon careful examination, it is evident that the impugned order of the Magistrate passed on applications styled as bail petitions, which are procedurally inapplicable

to the release of property. Section 516-A, Cr.P.C., governs interim custody of property during **inquiry** or **trial**, and its application is contingent upon the case being before a Court. In the present matter, no such inquiry or trial was pending, thereby rendering Section 516-A inapplicable. As regards Section 523(1), Cr.P.C., it empowers a Magistrate to pass orders regarding property seized by the police under Section 51 or suspected to be stolen or found under suspicious circumstances. Although the provision of the Special law “**West Pakistan Motor Vehicle Ordinance, 1965**” is not invoked during investigation so far, the provision of sections 3, 112-A, 114 and 115 are very material in the offences related to instant case. The Section 115 of said Order speaks:

115. Power to detain vehicle used without certificate of registration or permit.— Any police officer authorized in this behalf or other person authorized in this behalf by Government may if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of sub-section (1) of section 23 or without the permit required by sub-section (1) of section 44 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle.

7. The seizure in the instant case deems to be under said Ordinance, 1965 rather under the general provisions of the Code. Section 5(2), Cr.P.C., clarifies that offences under special laws are to be dealt with according to the Cr.P.C. only to the extent that such laws do not prescribe a distinct procedure.

#### **5. Trial of offences under Penal Code:**

- (1) All offences, under the Pakistan Penal Code Shall be investigated, enquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
- (2) Trial of offences against other laws: All offences under any other law shall be investigated, enquired into, tried, and otherwise dealt

with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

8. The phrase “otherwise dealt with” in Section 5(2) pertains to the handling of offences, not to ancillary matters such as disposal of property. Therefore, the order passed under Section 523, Cr.P.C., in a case arising under the ibid Ordinance readwith the provisions of Code, is ultra vires and without lawful authority. The Magistrate was not competent to invoke Section 523, Cr.P.C., in the absence of a seizure under the Code or a pending criminal inquiry.
9. Another legal reasoning may also be considered in support of the applicability of Section 523(1), Cr.P.C. The language of the provision expressly contemplates that an order may be passed with respect to property taken under Section 51, Cr.P.C., and further reiterates the terminology employed in Section 550, Cr.P.C., concerning seizure of property by a police officer. This textual alignment indicates that the scope of Section 523(1) extends to property seized under both Sections 51 and 550, Cr.P.C. Accordingly, where property is taken into custody by the police either during the arrest of a person (Section 51) or under circumstances creating suspicion of the commission of an offence (Section 550), the Magistrate is empowered to make appropriate orders regarding its disposal, delivery, or custody. This interpretation reinforces the procedural coherence of the Code and ensures that property seized under lawful authority is subject to judicial oversight, thereby safeguarding the rights of parties and preserving evidentiary integrity.
10. The case laws cited by learned Counsel for the Applicant are distinguishable as in the present case the vehicle in question has been

declared as "case property" and in the case laws, the provision of Ordinance of 1965 were not discussed.

11. In view of above, I do not find any illegality in the impugned Order.

Consequently, the instant application is dismissed. At this stage, it may be noted that the Addl; PG has informed this Court that a Police report for prosecution of the Applicant is being submitted. Consequently, upon transfer of the case for trial to a Judicial Magistrate, it shall be open to the Applicant to move an application under Section 516-A, Cr.P.C. The said provision empowers the trial Court, during the pendency of inquiry or trial, to pass such orders as it deems fit for the proper custody of property involved in the offence and it does not empower to Judicial Magistrate who is supervising investigation in his *Administrative* or *personal designata* capacity to deal with the subject of release of case property. Therefore, the trying Magistrate shall be competent to exercise discretion under Section 516-A, Cr.P.C., and pass appropriate orders regarding the interim custody or disposal of the property, uninfluenced by any prior observations or interlocutory orders passed at the pre-trial stage.

12. Office is directed convey this Order alongwith copy of Route Permit (Annex-B/3 page -41) to Secretary, Govt of Sindh, Transport Department for taking necessary action regarding conduct of Secretary Transport Authority and to enforce uniform policy of "Route Permit" and "Fitness Certificate" in accordance with the operative Laws, chargeable fees etc including Section 106-A inserted vide Sindh Act No.XII of 2021.

**JUDGE**