

IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Revision Application No.177 of 2025

Present:

Justice Zafar Ahmed Rajput, ACJ

Justice Jan Ali Junejo

Applicant : Wali Muhammad s/o Ghirat Khan, through his attorney / son Atta Muhammad through Mr. Shah Imroze Khan, Advocate.

Respondents : (1) The Spl. Court of CNS-I, Karachi
(2) ANF Gulshan-e-Iqbal and 3) The State, through Mr. Habib Ahmed, Special Prosecutor, Anti-Narcotic Force (ANF)

Date of hearing : 28.10.2025

Date of order : 28.10.2025

ORDER

ZAFAR AHMED RAJPUT, ACJ: Impugned in this Crl. Revision Application is the order, dated 29.07.2025, whereby the Special Court-I (CNS), Karachi ("*Trial Court*") dismissed the application, filed by the applicant under Section 516-A, CrPC, for the return of the vehicle i.e. Nissan diesel truck bearing registration No.TLJ-855, Model 2006, Engine No. FE6121106CP and Chassis No. PKD411H85255-3 (the "**Vehicle**") along with Container No. MMU-688664.

2. It is alleged that, on 01.10.2024, the complainant, S.I Atta Ullah Khan Jadoon, intercepted the Vehicle at Indus Chowk, Northern Bypass, Gadap Town, Karachi, which was being driven by one Sudes Khan (*accused*). Upon search, 25 packets of *charas*, weighing 30 kilograms, concealed in the spare tyre, were seized. The driver-accused was arrested; seized charas, along with the Vehicle, was taken into custody, whereafter FIR No.43/2024 was registered under Sections 6 and 9(c) of the Control of Narcotic Substances Act, 1997 (the "**Act**"), at P.S. ANF, Gulshan-e-Iqbal, Karachi.

3. The applicant earlier moved an application before the Trial Court seeking release of the Vehicle on *superdari*, which was declined, vide order dated 13.01.2025. Against that order he, through his son, filed Crl. Revision Application No.14 of 2025 before this Court which, vide order dated 27.06.2025, was dismissed as having been filed incompetently and without proper authorization. Thereafter, he on the basis of a fresh Power of Attorney submitted second application under Section 516-A, CrPC before the Trial Court, which too was dismissed vide impugned order.

4. Learned counsel for the applicant contends that the applicant is engaged in the transport business and he is the owner of the Vehicle; that there is no evidence on record to show that the Vehicle was used for the commission of the alleged offence with the consent of the applicant or that the applicant had any knowledge of concealing the charas in the spare tyre of the Vehicle by his employee-driver-accused; that the applicant joined the investigation; however, he has not been made an accused in the instant case by the I.O.; that the Vehicle is lying in the yard at the Police Station, which is no longer required for investigation and its continued retention would expose it to damage and deterioration with the passage of time; that under Sections 32 and 74 of the Act, confiscation requires proof of the owner's knowing involvement, which is absent in this case; that the applicant undertakes to produce the Vehicle before the Court as and when required and shall not alter or create any third-party interest therein in any manner whatsoever, in case the Vehicle is released to him on *superdari*.

5. Conversely, learned Special Prosecutor for ANF, while opposing the instant Crl. Revision Application, maintains that since the subject vehicle was allegedly used for transportation of narcotics, which is liable to be

confiscated on the conclusion of the trial; hence, its release at this stage may prejudice the case of the prosecution.

6. Heard and perused the record.

7. It appears from the record that the Vehicle was handed over by the applicant to the driver-accused for the transportation of goods, which was found to have been used for trafficking narcotics. The I.O. has clearly stated in the charge-sheet that the applicant did not have any connection with the alleged narcotics and its transportation. Even the applicant has not been implicated as an accused in the instant case.

8. It may be observed that a vehicle can be confiscated under Section 32 of the Act only in three conditions, i.e. firstly, where it is carrying unlawful narcotics along with some lawful narcotics, secondly, where it is part of the assets derived from narcotic offences and thirdly, where narcotics have been recovered from its secret chambers, cavities or compartments. In the instant case, it is an admitted position that the alleged charas has been shown recovered from the spare tyre lying in the Vehicle. It is yet to be decided after recording of evidence by the Trial Court if the Vehicle was part of the assets of the applicant derived from narcotic offences, while the rest two aforesaid conditions are not applicable in the case of the applicant.

9. It may further be observed that a joint reading of Sections 32 and 74 of the Act, reveals that a vehicle is liable to confiscation only when it is proved that its owner knew that the offence was being or was to be committed, and that an applicant seeking interim release must establish lawful ownership and absence of any nexus with the accused or the offence. A vehicle may, therefore, be released on *superdari* once the Court is *prima facie* satisfied

about the applicant's ownership and lack of association with the accused or the commission of the offence, while the burden to prove the owner's knowledge rests with the prosecution at trial. Reliance in this regard is placed on the case of Amjad Ali Khan v. The State (PLD 2020 S C 299).

10. In the present case, there is nothing on record to suggest that the applicant is not the owner of the Vehicle or that he had any knowledge of, or connection with, the alleged offence; hence, there appears to be no legal impediment in releasing the same to the applicant on *superdari* under appropriate terms and conditions. Moreover, as the Vehicle is stated to be lying under the open sky at the Police Station, it would serve no purpose except damage to its parts, corrosion and rust in the engine, exhaust system and other metal parts.

11. For the foregoing facts and reasons, the impugned order is set aside. The Vehicle shall be released to the applicant on *superdari*, subject to his furnishing a solvent surety in the sum of Rs.10,00,000/- (*Rupees Ten Lac only*) and a personal bond in the like amount for the satisfaction of the Trial Court. The applicant shall also furnish an Undertaking to the effect that he shall not sell, transfer or alter the Vehicle without prior permission of the Trial Court and to produce the same before the Trial Court as and when required by it. These conditions shall remain operative until the conclusion of the trial.

The Crl. Revision Application stands allowed in the above terms.

ACTING CHIEF JUSTICE

JUDGE