

IN THE HIGH COURT OF SINDH, KARACHI  
Cr. Revision Application No.110 of 2025

Present:  
Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Khalid Hussain Shahani

Applicant:- Mst. Musarrat Nisar through Mr. Muhammad Hanif Noonari, advocate.

Respondent:- The State through Mr. Khadim Hussain, Additional Prosecutor General.

Mr. Muhammad Sharif Buhtto, advocate for respondent.

Date of hearing:- 05.05.2026

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**MUHAMMAD IQBAL KALHORO J:** Applicant is mother of alleged main accused namely Khurram Nisar in Crime No.500/2022, u/s 7 ATA, 353, 302 PPC, registered at PS Clifton, Karachi on 22.11.2022 pending trial before Anti-Terrorism Court No.VII, Karachi.

2. As per record, after committing the offence, the son of applicant absconded to Sweden and has not since been arrested. In the trial, proceedings u/s 87 and 88 CrPC were initiated against him and property viz. House No.2/1, 27<sup>th</sup> Street, Phase-V, DHA, Karachi standing in his name in the record of rights was attached vide order dated 03.01.2023. This order was challenged by his father before the trial Court unsuccessfully and then filed a revision application before this Court on the ground that he with his remaining family was living in the said property. This revision application was dismissed.

3. Subsequently, applicant, the real mother of absconder, filed application in the trial Court stating that she is the real owner of the said property and under the force and coercion had gifted her share of 50% in the said property to his absconding son who was already owner of remaining 50%, in the year 2016. Besides, she has filed a civil suit seeking such declaration, and the reliefs, among others, that until and unless the suit is decided, the property shall not be seized u/s 88 CrPC in terms of the attachment order dated 03.01.2023. The application in this

respect has been dismissed by the trial Court vide order dated 14.04.2025 which is impugned in this revision application.

4. Learned counsel for applicant has relied upon a number of case laws<sup>1</sup> and has stated that until and unless the civil suit is decided, the property may not be seized and the parents of the absconding accused may be allowed to live in the said property; the case otherwise has reached final stage viz. final arguments. The absconding son was the benamidar owner of the house, and the applicant under coercion had gifted 50% of her share in the house to him. The trial Court may be allowed to decide the fate of the property in the final judgment.

5. On the other hand, learned counsel for the legal heirs has opposed this request and has, confirmed by learned Additional Prosecutor General, informed that the absconding accused has been declared as proclaimed offender; the case has been tried only against his alleged accomplices. Therefore, the decision in the case would not affect the fate of this property belonging to absconding accused attached u/s 88 CrPC, whose case is likely to be kept on dormant file until his arrest.

6. We have heard the parties and perused material available on record. In our view, the claim of the applicant that she is the real owner of the said property and that his absconder son is only its benami owner needs to be adjudged by a civil Court before any decision, upsetting the order of the trial Court attaching and seizing the property, can be passed in favour of applicant. It is informed that in the civil suit no stay or interim order has been passed in favour of the applicant gives necessary coherence to above conclusion. On the day, when the offence was committed, as per record, the said property i.e. the house was in the name of absconding accused and therefore was liable and exposed to proceedings to be held u/s 88 CrPC without any exception. The circumstances, under which 50% of the property was gifted to the absconding accused in the past by the applicant is not the domain of a criminal Court to determine, not the least while dealing with the issue of abscondance of an accused and attaching his property. It is only the civil Court which can adjudge such issue and give declaration verifying claim of the applicant.

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<sup>1</sup> P.L.J. 2001 Peshawar 1, 2001 SD 543, P.L.J. 201 SC 5, 1992 P.Cr.L.J. 360 [Peshawar], 2014 M.L.D. 1043 [Lahore], 2001 P.Cr.L.J. 628 [Peshawar], N.L.R. 2001 Criminal 204, 2009 S.C.M.R. 310, 2016 M.L.D. 1426 [Sindh (Sukkur Bench)], 2008 S.C.M.R. 1384, 2007 Y.L.R. 3270 [Peshawar] and 1985 P.Cr.L.J. 825(2) [Karachi]

7. It goes without saying that if a civil Court decides the suit in favour of the applicant and declare her the actual owner of the said property to the extent of 50% as asserted by her, it will trump the decision of the trial Court qua the said property passed u/s 88 CrPC and the property will eventually be restored to applicant. However, at this stage when admittedly the property is in the name of absconding accused in the record, any question to his status including the claim that the property was gifted by applicant under force and coercion, and further that absconding accused is its benami owner, cannot be looked into by the trial Court and even by this Court in the criminal proceedings for want of jurisdiction. It needs a deeper appreciation of evidence to be led and recorded only in the civil suit. Therefore, we do not find any merit in this application and dismiss it accordingly along with pending application.

The Cr. Revision Application is accordingly disposed of in above terms.

JUDGE

JUDGE

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