

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.775 of 2022

Applicant : Muhammad Ashfaq Mughal  
Through Mr. Abdul Mutalib, advocate.

Respondent : The State  
Through Mr. Khadim Hussain,  
Addl. Prosecutor General, Sindh along with  
I.O of the case.

Date of hearing : 28.12.2022

Date of order : 28.12.2022

## **ORDER**

**ADNAN-UL-KARIM MEMON, J --** Through this Criminal Misc. Application, the applicant prays to set aside the order dated 18.07.2022, passed by the learned IV –Additional Sessions Judge, Karachi West and further prays for interim custody of vehicle HTV Hino Truck bearing registration No. SMA 044, Engine No.HO7DA, Chassis No.FD2JLB-15208, Model 1994 may be released on P.R bond to the applicant being its original owner.

2. Mr. Abdul Mutalib learned counsel for the applicant submits that he moved application under Section 516-A Cr.P.C before the learned trial court for restoration of vehicle / oil tanker in case crime 303/2022, under Section 395 PPC lodged at P.S Manghopir, which was allowed vide order dated 11.05.2022 subject to furnishing surety in the sum of Rs.50, 00,000/- and P.R bond in the like amount. He further submits that due to poor financial condition, he moved another application for reduction of surety as he was/is unable to arrange the huge amount. He further submits that the said vehicle is loaded with 48000 liters flammable Furnas oil, and is available at concerned police station, which is dangerous for general public.

3. learned Addl. Prosecutor General, Sindh assisted by Investigation officer present in court states that the case was disposed of on his part under A Class, however the learned trial took cognizance of the offence and directed to submit challan in the case, therefore he has no objection if the tanker is released to its original owner however i.e. applicant.

4. Heard the learned Counsel for the parties at considerable length and perused the case papers so made available before me.

5. The main theme of the arguments of the applicant is that Oil Tanker is parked at police station and being explosive substance may blast at any time, therefore, the interim custody of Oil Tanker may be handed over to the applicant being owner of the subject vehicle.

6. It reveals from the record that instant criminal revision application has been filed by the applicant being owner of the Oil Tanker filled with 48000 liters flammable Furnas oil along with verified copy of registration of documents of subject vehicle as it was seized by the police with relation to crime 303/2022, under Section 395 PPC lodged at P.S Manghopir, and that request was declined by the trial Court through impugned order to reduce the surety amount.

7. Having perused the relevant provision, it transpires that if a property regarding which an offence appears to have been committed or which appears to have been used for the commission of offence as produced before any criminal Court during any inquiry or trial, it empowers the Court to pass orders, for the proper custody of the property; however, if the property is subject to speedy or natural decay, the Court may order it to be sold or otherwise disposed of if recording such evidence as thinks fit.

8. The second proviso of the said section further empowers the Court that if the property is dangerous drug, intoxicant, intoxicating liquor or any other substance is seized or taken into custody under any law for the time being in force, the Court either suo moto or on an application and under its supervision and control to obtain and prepare sample of the property for safe custody and production before it or to any other Court and cause destruction of the property under a certificate issued by it in that behalf.

9. The third proviso clarifies that on production of such sample before the Court in relation to the proceedings of the offence, the sample will present the whole property as if the whole property has been produced in Court.

10. It needs not to be said that normally entire property secured or seized by the investigation officer is required to be produced in the Court; however, there are some exceptions to the general rule as provided under second and third proviso. The discretion vested in the Court under the said

provisos is to be exercised judiciously by giving notice to all concerned and taking into consideration the peculiar facts and circumstances of each case in order to safeguard the available right of the parties.

11. Reverting to the case in hand, vehicle in question which is filled with huge quantity of 48000 liters flammable Furnas oil is parked at open space of police station which could be dangerous not only for police officials but also for people whose houses and shops are located around the police station.

12. As far as, the Tanker/Vehicle in question is concerned, it has been observed above that present applicant is owner of the subject vehicle as disclosed by the I.O of the case and he has no objection, if the subject vehicle may be handed over to him. No other claimant of the subject vehicle is before this Court, therefore, the subject vehicle HTV Hino Truck bearing registration No. SMA 044, Engine No.HO7DA, Chassis No.FD2JLB-15208, Model 1994 as stated supra be released/handed over to applicant upon his furnishing solvent surety in the sum of Rs.500,000/- and P.R. bond in the like amount to the satisfaction of the trial Court. However, the applicant is directed to produce the case property viz. subject vehicle HTV Hino Truck bearing registration No. SMA 044, Engine No.HO7DA, Chassis No.FD2JLB-15208, Model 1994 before the trial Court as and when required by it. Applicant is further directed not to sell the subject vehicle till disposal of case and shall deposit the original documents of the vehicle with the trial court. The trial court shall ensure that no sale purchase of the subject vehicle take place till final disposal of the aforesaid case.

13. The instant criminal misc. application stands disposed of in above terms along with listed application. Office is directed to immediately send the copy of this order to the trial Court through some swift means for information and compliance.

JUDGE

Shahzad Soomro