

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Misc. Application No. 245 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of main case.

18th May, 2022

Mr. Jamroz Khan Afridi, Advocate for applicant.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: It is alleged that a police party was on patrol duty when it saw a person selling diesel on a Suzuki vehicle bearing number KX-7384. The police arrested the person who was identified as Umar Farooq. He was arrested and F.I.R. No. 119 of 2022 was registered under sections 285 and 286 P.P.C. at the Ibrahim Haideri police station.

2. The owner of the Suzuki vehicle i.e. Muhammad Abid, filed an application under section 516-A Cr.P.C. praying therein that the vehicle be returned to him pending trial. The learned Civil Judge and Judicial Magistrate, Consumer Protection Court, Malir, Karachi in his order dated 09.03.2022 noted that the investigating officer had recorded his no objection if the vehicle, which was parked at the police station, be returned to Muhammad Abid. However, the learned magistrate dismissed the application on the ground that the 700 litres of diesel in the Suzuki vehicle was case property and thus the same could not be returned to Abid. The applicant filed Criminal Revision Application number 22 of 2022 before the learned Sessions Judge, Malir, Karachi challenging the order of the learned magistrate, however, his application was dismissed vide order dated 07.04.2022. The two orders dated 09.03.2022 and 07.04.2022 have been challenged by Muhammad Abid in these proceedings.

3. I have heard the learned counsel for the applicant who has argued that the vehicle is rotting away parked in the police station and it is a loss which the applicant is suffering even though he has nothing to do with the crime complained of. The learned APG has argued that the diesel which was in the vehicle was being sold illegally. I have heard the learned counsel for the applicant as well as the learned APG.

4. No purpose will be served if the vehicle admittedly owned by the applicant is confined at the police station until the conclusion of the trial. It will simply rot away there as is the situation in most cases where vehicles are confined in police stations or will unlawfully be used by the staff of the police station, once again which seems to be a common practice with such vehicles. An offences under section 285 and 286 is restricted to being negligent with fire, combustible or explosive substance and at best it is the diesel which was found from the vehicle that falls within the foregoing categories.

5. In view of the above, the diesel in the vehicle may be moved to drums, which Muhammad Abid undertakes to provide, subject to the following conditions, with which the learned APG also agrees:

- (i) Muhammad Abid shall deposit the original registration documents of the vehicle with the learned trial court which shall be released to him subject to the final judgment of the learned trial court.
- (ii) Muhammad Abid shall also execute an undertaking that he will not change the appearance of the vehicle in any manner, that he shall not create a third party interest in the said vehicle and that he will produce the same as and when the learned trial court directs him to do so. A P.R. Bond in the amount of Rs. 1 million will also be executed by Muhammad Abid. Both documents will be put on record of the learned trial court.
- (iii) The Motor Vehicle department shall put the relevant endorsement against the record of the vehicle maintained by it to the effect that the vehicle cannot be transferred without the permission of the learned trial court. Confirmation that such an endorsement has been made shall be put on the record of the case.
- (iv) The diesel which the vehicle was carrying will be transferred into drums by the investigating officer of the case in the presence of the accused and his counsel who shall both also sign on the memo prepared by the investigating officer to evidence transfer of the diesel and their consent thereto. The learned prosecutor assigned duty in the learned trial court shall also sign the memo and the same will be kept on record of the learned trial court.

- (v) Instead of the diesel lying in the police station the drums of the same will be deposited in the maalkhana for explosives and combustible substances during the trial subject to any final order passed by the learned trial court for disposal of the same.
6. The application stands disposed of in the above terms.

JUDGE