

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Misc. Application No. 575 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of main case.

09-03-2023

Mr. Faheem Shah, Advocate for applicant.

Ms. Seema Zaidi, Addl.P.G.

Complainant present in person.

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Omar Sial, J: Through this application an order dated 20.09.2022 passed by the learned 4th Additional Sessions Judge, Karachi East has been challenged. In terms of the said order the learned trial court dismissed an application filed under section 516-A Cr.P.C. seeking the return of a water tanker that was involved in a road accident in which one young boy unfortunately lost his life.

2. F.I.R. No. 425 of 2022 was registered on 22.06.2022 under sections 279, 337-G and 427 P.P.C. on the complaint of one Abdul Khaliq. Khaliq reported that his 18 year old son Zubair was coming back from University when his motorcycle was hit by a water tanker being driven by Mohammad Zahid.

3. The police conducted an inquiry and it was reported that the water tanker in question is in the name of Mohammad Irfan (the applicant in these proceedings) and that Mohammad Zahid was the driver who was driving the water tanker at the time of the incident. Mohammad Irfan, the owner of the vehicle, has also been nominated an accused in that case though he was admittedly not present when the accident occurred. There is no other claimant of the said water tanker.

4. The learned Addl.P.G. argued that under no circumstances should the water tanker be returned to its owner as the police found out that the driving license of Mohammad Zahid, who was driving the water tanker,

subsequently was found to be a fake one. She was therefore of the view that as the applicant had not conducted due diligence on his driver's license, he should be penalized at this stage only by not returning the tanker. With much respect I do not agree with the reason given by the learned Addl.P.G. to oppose the application. Similarly, the complainant who was also present, while admitting that the applicant was not even present on the fateful day, shared the view of the learned Addl.P.G. His opposition though was based on emotions, for which he cannot be blamed as he has suffered a huge irreparable loss in this incident. I have heard the counsels.

5. No purpose will be served in letting the tanker rot in the police station where it is parked exposed to elements. It was not the tanker itself which was the culprit for the incident but the person driving it who has a case to answer. The water tanker may be returned to the applicant upon his fulfilling the following conditions:

- (i) swearing an affidavit that he will not alienate the water tanker or create any third party interest in the said tanker till the judgment at trial is announced and then its release or otherwise will be subject to the judgment of the learned trial court. The affidavit shall also contain representations that the applicant will not change or modify in any manner the look, color, shape, specifications of the water tanker in any manner whatsoever and that he shall make the water tanker available in court as and when directed by the learned trial court.
- (ii) the Director of Excise and Taxation, Quetta will be informed that the relevant entry be made against the record of the water tanker in its record so that no further transactions can be conducted on the tanker without approval of the learned trial court.
- (iii) the original papers of the water tanker shall be deposited in the learned trial court and the receipt of deposit of the papers together with photocopies of the papers will suffice for traffic police requirements.

6. Once the above conditions are fulfilled, the water tanker may be released to the applicant pending trial. Application stands disposed of in the above terms.

JUDGE