

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No. 734 of 2022
(*Muhammad Anwar v The State and others*)

Date	Order with signature of Judge
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Before:
Mr. Justice Salahuddin Panhwar
Mr. Adnan-ul-Karim Memon

For hearing of main case

For hearing and Order: 25.11.2024

Mr. Muhammad Hanif Sama advocate for the applicant.
Respondent No.3 Jeelan present in person.
Mr. Ali Hyder Saleem APG.

ORDER

Adnan-ul-Karim Memon, J:- Through this Criminal Miscellaneous Application under Section 561-A Cr.P.C., the Applicant Muhammad Anwar appeals to this court against the order dated 22.11.2022, dismissing the plea to return the vehicle Toyota Premio Saloon (AWG-193, 2007 model) in Special Case No. 346/2021, seized in FIR No. 394/2021 under section 6/9 (c) of the CNS Act of P.S Shershah Karachi.

2. The learned counsel for the Applicant argues that he was the last possessor of the vehicle, having rented it from one Jeelan/respondent No.3, who purchased it from the registered owner, Gul Zaman. The counsel contends that the vehicle's prolonged detention by the police/Nazarat will cause damage and that he is entitled to its return to keep in safe custody till the original owner of the vehicle surrenders before the trial court in terms of notices issued to him under section 87/88 Cr.P.C. The Applicant's counsel further argues that a false FIR was lodged against the Applicant and one Gul Zaman who is reported to be an absconder in the main case, but the Applicant was acquitted by the trial court vide Judgment dated 29.09.2022. However, Gul Zaman, the registered owner, is absconding. He further submitted that respondent No.3 has filed his affidavit of no objection if the subject vehicle is returned to the applicant on supardari. He prayed for allowing the Cr. Misc. Application.

3. Mr. Ali Hyder Saleem APG, has objection to the grant of this Cr. Misc. application. He submitted that the SHO's report states that the vehicle's owner, Gul Zaman, is a wanted accused who has

absconded. The Excise and Taxation Department confirms that the vehicle is registered in Gul Zaman's name. He prayed for the dismissal of the instant Cr. Misc. Application.

4. The trial court denies the application to restore the vehicle to the applicant. The trial Court noted that this is the second such application, the first having been denied in a previous order. The trial Court finds that the sale agreements presented by the applicants are not legally valid and that the vehicle's registered owner, Gul Zaman, is a proclaimed offender. The trial Court concluded that restoring the vehicle to the applicants would hinder the arrest of Gul Zaman.

5. Primarily, seized vehicles can generally be released during criminal trials. However, under the CNSA, vehicle release during drug offense trials is restricted. Only the lawful owner, who was/is unaware of the intended crime and has no connection to the accused, can seek release on Superdari. The prosecution must prove the owner's knowledge during the trial. The court can grant interim release if satisfied with the owner's claim and lack of association with the crime. To prevent the registration of crime-involved vehicles, the Supreme Court in the case of Amjad Ali Khan Vs the State vide order dated 13.03.2020, considered amending the Motor Vehicle Ordinance (MVO) and its rules. Additionally, develop an online verification system for vehicle crime history, require a No Objection Certificate from the police or an affidavit from the transferor/transferee at the time of registration. An excerpt of the order is reproduced as under:-

"For what has been discussed above we find that the order of the trial court whereby the petitioner had been allowed superdari of the Vehicle was not sustainable under the law and was, therefore, rightly set aside by the High Court. We uphold the impugned order, decline leave and dismiss this petition, with the above direction to the Provincial Governments and ICT, Motor Registration Authority and the Police. The Deputy Registrar of this Court at the Lahore Branch Registry shall send copy of this order to the Secretaries, Excise & Taxation Department of all the Provincial Governments and Director, Excise & Taxation Department, ICT, as well as, Inspectors General Police of the respective Governments, for information and appropriate action at their end. These are the reasons for our short order dated 13.03.2020."

6. However, in the present case, the applicant had been shown the last person in possession of the vehicle before it was seized by the Police authorities in connection with a criminal case. However, the applicant was later acquitted in that case, meaning, he was found not guilty of any wrongdoing related to the subject vehicle.

This acquittal potentially strengthens his claim to the custody of the vehicle on Superdari, as it prima facie shows that he was not involved in any illegal activity involving the subject vehicle. The detention of the vehicle at Nazarat/police custody/court custody can lead to financial loss for the owner, including loss of use, depreciation, and potential damage to the vehicle. If the case against the absconding owner is dormant, the continued detention of the vehicle may not serve any legitimate purpose. Besides respondent No.3 has put his appearance and filed his affidavit of no objection on 14.11.2023 on the premise that he purchased the subject vehicle on the open letter dated 25.05.2021 and he entered into iqrarnama of the said vehicle on rent to Muhammad Ayaz on 29.06.2021. He further submitted he has no objection if the subject vehicle is handed over to the applicant on supardari. The applicant has also endorsed his viewpoint.

7. Impugned order is set aside accordingly. The applicant can take custody of the vehicle Toyota Premio Saloon (AWG-193, 2007 model) on superdari, subject to depositing the original vehicle document and furnishing a surety and PR bond of Rs. 500,000 with the Nazir of this Court until the original owner appears in court. The trial court shall facilitate compliance with the order.

JUDGE

JUDGE