

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Misc. Application No.602 of 2025

Applicant: Gul Muhammad Khan
S/o Mian Umer Khan
Through Mr. Makhdoom Tahir Abbas,
Advocate.

Respondent: The State through Ms. Seema Zaidi,
Additional Prosecutor General, Sindh.

Complainant's father Naseer is present.

Date of hearing: 30.12.2025

Date of Short Order: 30.12.2025

O R D E R

Dr. Syed Fiaz ul Hassan Shah, J :- By this order, I intend to dispose of instant Criminal Miscellaneous Application filed by the Applicant challenging the Order dated 02.07.2025 ("**impugned Order**") passed by the learned Xth Additional Sessions Judge, Karachi West (the "**Trial Court**") in Crl. Misc. Application No.270 of 2025 arising out of the Crime No.131/2025 for the offence under sections 320, 337-G PPC registered with Police Station SITE-B, Karachi, whereby, the applicant's application for release of vehicle i.e. Dumper bearing registration No.JV-3878, Engine No.PE6-059747, Chassis No.CW45H-00957, was dismissed.

2. Learned Counsel for the applicant submits that the vehicle was already burnt under fire by mob at the crime scene and an

application filed by him was illegally dismissed; that the applicant has been deprived of his lawful property; that the applicant is dependent upon the income of such vehicle and it would appropriate to release the vehicle as interim arrangement. He has also placed a copy of valid driving license.

3. Heard the learned counsel for applicant and learned Addl. P.G. Sindh and perused the record.

4. The applicant claims to be the owner of vehicle while, according to learned counsel, it was driving by the driver Ikramullah s/o Gul Muhammad Khan, employee of the owner/applicant and ran over a boy Samama aged about 10 years and his mother Laraib, resulting the complainant's son / said boy was passed away while his wife Laraib was sustained serious injuries. I have noted that the learned trial Court has mainly placed reliance on non-availability of the foundational document "Fitness Certificate". Neither the owner nor driver are entitled to come over the roads without first making essential compliance of statutory requirements including the "Fitness Certificate". In case, the Applicant comply with requirement of mandatory rules, they would not bring the vehicles on the roads, which can prevent the commission of the alleged offence causing lost the life of a 10's years old boy, the surviving son of the complainant. Furthermore, the driving licence of the driver, as per prosecution, is not available in the police file, as the same has not been presented before the Investigating Officer of the case, although the learned counsel for applicant has filed a photo stat copy of driving licence

of the driver before this Court, however, the same cannot be taken into consideration at this stage, the veracity of such driving license can only to be decided by the trial Court at the time of adducing of evidence.

5. A conscientious judge seeking to work within the confines of his or her own authority has no discretion to ignore jurisdictional limits or to proceed to a final judgment unless he determines that jurisdiction actually exists. Jurisdiction is the primary question to deal with the situation falling under section 516-A or 523 Cr.P.C. Sections 516-A or 523 Cr. P.C. have statutory power attached to jurisdiction for the purposes of exercising the statutory right to adjudication. Whether a court had jurisdiction under Sections 516-A or 523 Cr.P.C. to order release of the seized vehicle.

6. Section 523(1) allows a Magistrate to deal with property seized under Section 51 or suspected to be stolen/found under suspicious circumstances. While cases involving vehicles, especially accidents causing death or injury, the Motor Vehicles Ordinance, 1965 applies. Sections 3, 112-A, 114, and 115 are relevant. Section 115 empowers police to seize and detain vehicles used without registration, permit, or in violation of permit conditions which reads as:

Section 115 – Power to detain vehicle used without certificate of registration or permit—Any police officer authorized in this behalf, or any other person authorized by the Government, may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of sub-section (1) of section 23 or without the permit required by sub-section (1) of section 44, or in contravention of

any condition of such permit relating to the route, area, or purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose, take any steps necessary for its temporary safe custody.

7. Where a vehicle was seized under the Motor Vehicles Ordinance, 1965 the provisions of procedural laws such as 516-A or 523 Cr.P.C. are static. Section 5(2) Cr.P.C. states offences under other laws are dealt with according to the Code, but subject to the special law. Thus, seizure under Section 115 of the Ordinance excludes application of Section 523 Cr. P.C. being special law. The phrase “otherwise dealt with” in Section 5(2) refers to procedure, not property disposal. Therefore, Section 523 Cr.P.C. cannot apply when seizure is under the Ordinance and no trial under Cr.P.C. is pending. Any order under Section 523 in such cases would be without authority.

8. Section 523(1) resembles Section 550 Cr.P.C. and may apply applies where police have lawfully taken possession of a vehicle that is (i) Directly related to the commission of an offence; (ii) Suspected to have been used in the commission of an offence; or (iii) Found under suspicious circumstances. Therefore, Court discretion under Section 523 must respect evidentiary importance. Vehicles in fatal accidents, contraband transport, or carrying physical traces are crucial evidence. In such cases, disposal under Section 523 is improper and proper use is the application of Section 516-A to ensure custody while preserving evidence. Section 516-A, Cr. P.C., pertains to the interim custody of property during the pendency of an inquiry or trial, and its

invocation is contingent upon two conditions. One the matter is pending or sub-judice before a determined “trial Court” and second that case property has been presented before the trial Court. Section 516-A Cr.P.C. would, therefore, have no application unless the property is produced before the Court during an inquiry or trial.

9. Statutory conditions invariably attach to statutory powers, such that a court exercising *jurisdictio* conferred by statute must adhere strictly to its procedural rules and limitations—interpreting them through doctrines like *ejusdem generis*, which confines general phrases to the class of specific precedents. Failure to do so may vitiate its jurisdiction or render its actions *ultra vires* and invalid, as such power derives not from absolute judicial whim but from legislative grant, and must remain within bounds prescribed by law—even in constitutional matters. These conditions delineate how, when and over what a court may act, ensuring powers are exercised justly and reasonably rather than arbitrarily, with procedural mandates inhering substantive elements of the statutory power.

10. There is nothing in the present case to show that the vehicle seized which formed the subject matter of the offence charged against the Applicant was produced before the trial Court. Therefore, the learned trial Court held that the application is “premature” and unless same is presented during evidence properly, the construction of statutory provision does not give power to the trial court to entertain such application and any order in

contravention to the requirement of two essential condition would be considered as without jurisdiction.

11. Upon consideration of the record submitted by the learned counsel for applicant, I have considered view that the applicant has failed to establish the necessity of a Route Permit or Fitness Certificate and one of the essential legal condition built in section 516-A Cr.P.C and reflected in Colum No.5 of the Police Report declaring it as “case property”. In view of the foregoing discussion, no illegality or procedural impropriety is found in the impugned order. Accordingly, the instant Crl. Misc. Application was dismissed by a short order dated 30.12.2025 and these are the reasons thereof.

J U D G E