

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. D - 58 of 2026

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Applicant : Bibi Hani widow of Haji Gul
Through Mr. Mallag Essa Dashti, Advocate.

Respondent : The State
Through Mr. Musharaf Azhar, Special
Prosecutor ANF.

Date of hearing : 13.08.2026

Date of order : 13.08.2026

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Bibi Hani invokes the revisional jurisdiction of this Court to assail the legality and propriety of order dated 28.01.2026, rendered by the learned Judge, Special Court-I (CNS), Karachi, in Special Case No.50 of 2020, emanating from Crime No.25 of 2020, registered at Police Station ANF, Gulshan-e-Iqbal, Karachi, for offences punishable under sections 6 and 9(c) of the Control of Narcotic Substances Act, 1997. By means of the impugned order, the learned Special Court declined the applicant's prayer for release of Hino oil-tanker/truck bearing registration No.TKY-033, chassis No.FM1NPD-19028 and engine No. JOCT-GM-15490 and, instead, directed its confiscation in terms of section 32 of the Act of 1997.

2. At the threshold, it may be observed that the application presented before the learned Special Court was captioned as one under section 516-A, Cr.P.C., whereas during the present proceedings an endeavor has been made to suggest that the application ought appropriately to have been treated as one falling under section 517, Cr.P.C. Such an objection, being essentially one of nomenclature, cannot be permitted to obscure the substantive character of the relief claimed. It is elementary that section 516-A, Cr.P.C. regulates custody and disposal of property during the pendency of an inquiry or trial, whereas disposal consequent upon

conclusion of the proceedings is governed by section 517, Cr.P.C., subject, of course, to any overriding or controlling provision contained in a special enactment. The controversy, therefore, deserves adjudication upon its true legal complexion rather than being allowed to founder upon an erroneous citation or description of the statutory provision.

3. The prosecution case, shorn of unnecessary details and confined to what is germane to the present controversy, is that on 21.01.2020 officials of the Anti-Narcotics Force intercepted the subject vehicle in the vicinity of Al-Asif Square, Super Highway, Karachi, and allegedly recovered twenty-five kilograms of heroin concealed within a specially constructed wooden compartment situated behind the driving and front seats. Accused Jasaf was apprehended at the spot. Upon culmination of investigation, the requisite report under section 173, Cr.P.C. was submitted; charge was framed on 01.09.2021; and subsequently Jasaf, upon tendering an application expressing his willingness to plead guilty, came to be convicted on 21.02.2024. The record further reflects that Haji Gul was portrayed in the prosecution papers as a participant in the occurrence, albeit his complete particulars were stated to be unavailable and his name was not placed in column No.2 of the charge-sheet. Significantly, from the inception of criminal proceedings on 21.01.2020 until his demise on 20.01.2022, a period extending to almost two years, Haji Gul neither submitted himself to the process of law nor approached the competent Court to assert ownership over the subject vehicle, seek its custody, explain the circumstances attending its alleged use, or otherwise invite a judicial inquiry into his purported proprietary interest therein.

4. The applicant, claiming to be the widow and legal successor of deceased Haji Gul, predicates her entitlement upon the assertion that Saifullah son of Abdul Ghaffar, in whose name the subject vehicle stood registered, had sold the same to Haji Gul during his lifetime. According to her, after the demise of Haji Gul, the registered owner acknowledged the transaction and expressed his unequivocal no-objection to delivery of the vehicle to her. It is further urged that the applicant was neither nominated in the FIR nor arraigned as an

accused, and that the vehicle constitutes the sole means of sustenance for herself and her children and is progressively deteriorating while remaining exposed in official custody. The documentary record, however, presents a materially different complexion. The verification report dated 18.09.2024 issued by the Motor Registering Authority continues to reflect Saifullah, rather than Haji Gul or the present applicant, as the registered owner. It further appears that an earlier endeavor for release of the vehicle met dismissal for non-prosecution on 01.11.2024. The claim was thereafter revived and pursued subsequent to the conviction recorded in the substantive criminal proceedings, eventually culminating in the impugned order.

5. Learned counsel for the applicant strenuously contended that the applicant is an innocent widow against whom no allegation of complicity in the narcotics offence has ever been levelled; that there exists no evidence connecting her personally with the alleged recovery; and that the learned Special Court, while declining release of the vehicle, impermissibly saddled her with a burden which the governing law does not contemplate. It was maintained that the affidavit/no-objection furnished by the registered owner, coupled with the documents pertaining to the alleged sale and succession, sufficiently establishes her entitlement to custody. Considerable emphasis was also placed upon the progressive deterioration of the vehicle in official custody and the resultant deprivation of the applicant's asserted source of livelihood. On these premises, setting aside of the impugned order and restoration of the vehicle to the applicant were solicited.

6. Conversely, learned Special Prosecutor for the ANF supported the impugned order and contended that the subject vehicle was not merely incidentally associated with the occurrence but had allegedly been structurally modified by creation of a concealed compartment for transportation of an exceptionally substantial quantity of heroin. It was further argued that the convicted accused was apprehended while exercising control over the vehicle; that Haji Gul stood reflected in the prosecution papers as a participant in the transaction but remained beyond the reach of the Court throughout his lifetime;

that the applicant's derivative claim of ownership is irreconcilable, at least prima facie, with the official registration record; and, above all, that the conviction as well as its attendant and consequential questions are presently sub judice before this Court in Criminal Appeal No. D-278 of 2024.

7. We have accorded anxious consideration to the submissions advanced at the Bar and have minutely examined the available record. The controversy assumes particular significance because what is sought to be restored to a private claimant is not ordinary property fortuitously taken into custody, but a conveyance allegedly employed, and structurally adapted, for commission of a grave narcotics offence. Section 32 of the Control of Narcotic Substances Act, 1997 cannot be relegated to the status of a mere procedural adjunct to section 517, Cr.P.C. It constitutes a substantive component of the special statutory regime enacted by the legislature for confiscation of narcotic drugs, psychotropic substances, controlled substances, materials, apparatus, utensils, vehicles and conveyances associated with offences under the Act. In the case of a vehicle, vessel or other conveyance, the statutory protection against confiscation becomes relevant where the requisite knowledge on the part of the owner that the offence was being, or was to be, committed is not established. The legislative solicitude is thus directed towards protection of a bona fide and innocent owner; it cannot be enlarged into an indefeasible or automatic entitlement in favor of every person subsequently setting up a derivative proprietary claim, particularly where the asserted title itself remains susceptible to serious factual controversy.

8. The jurisprudential premise underlying section 32 is that mere physical employment of a conveyance in commission of an offence does not, in every conceivable circumstance, inexorably entail its confiscation where an established bona fide owner is demonstrably innocent of knowledge of the criminal design. The converse, however, is equally significant. The statutory protection is not abstract; its application necessarily depends upon ascertainment of foundational facts, including the identity of the true owner, authenticity and temporal origin of the asserted title, circumstances

in which possession was parted with, and absence of knowledge, connivance or conscious facilitation of the prohibited activity. When examined against that touchstone, the applicant's claim encounters substantial impediments. The official registration record continues to acknowledge Saifullah as the registered owner. The applicant claims no independent proprietary interest but traces her entitlement exclusively through deceased Haji Gul. Haji Gul, however, was not portrayed in the prosecution case as an unsuspecting stranger whose property had inadvertently fallen into criminal hands; rather, the challan reflected him as a participant in the occurrence. More importantly, notwithstanding the registration of the case on 21.01.2020, he remained aloof from the judicial process until his death on 20.01.2022. During this considerable interregnum, he neither surfaced before the competent Court nor asserted that the vehicle belonged to him, nor sought its interim custody, nor offered any explanation as to how a vehicle allegedly owned by him came to contain a specially constructed compartment from which twenty-five kilograms of heroin were recovered. These circumstances cannot be dismissed as legally inconsequential in summary proceedings concerning release of case property. The applicant's personal innocence of the underlying offence, even if assumed for the purposes of the present controversy, does not *ipso facto* establish either the proprietary title of Haji Gul or his absence of knowledge regarding the alleged criminal use of the vehicle. A derivative claimant must necessarily establish the juridical foundation from which the derivative right is said to emanate; she cannot, merely by reason of succession, acquire a superior possessory entitlement to that which is shown to have lawfully vested in her predecessor.

9. There exists yet another impediment which, in the present posture of proceedings, assumes determinative significance. Criminal Appeal No. D-278 of 2024, preferred against the conviction recorded in the substantive prosecution, is admittedly pending adjudication before this Court. The appellate jurisdiction thereby invoked encompasses examination not merely of the sustainability of the conviction and sentence but also of such orders and consequences as are legally dependent upon the ultimate fate of the

criminal proceedings, including the disposition of property allegedly instrumental in commission of the offence. The statutory architecture of section 517, Cr.P.C. itself recognizes the pre-eminence of appellate scrutiny by restraining implementation of a final disposal order, where an appeal is preferred, until the appeal has been determined. To direct release and delivery of the subject vehicle to a private claimant in collateral revisional proceedings while the substantive criminal appeal remains pending would amount, in practical effect, to pre-empting an issue integrally connected with the appellate proceedings. Such a course would carry the manifest potential of generating mutually irreconcilable judicial commands concerning the same case property and may render nugatory, or at least substantially impair, the efficacy of the appellate jurisdiction. Judicial discipline, institutional consistency and orderly administration of criminal justice, therefore, dictate that the subject vehicle should remain preserved and available to abide the ultimate determination in Criminal Appeal No. D-278 of 2024. The special statutory regime contemplated by section 32 of the Act of 1997 reinforces, rather than detracts from, that conclusion.

10. The Court is not insensible to the compassionate considerations pressed on behalf of the applicant. Her asserted status as widow of the deceased, the alleged dependence of her family upon the vehicle for livelihood, and the apprehension of deterioration of the vehicle while remaining in custody are circumstances deserving due consideration. Compassion, however compelling, cannot substitute proof of legal entitlement; hardship cannot perfect an otherwise disputed title, obliterate material circumstances appearing from the prosecution record, or denude the appellate Court of its lawful authority over property whose fate remains intertwined with a pending criminal appeal. Equally, it would be inappropriate in the present revisional proceedings to embark upon a conclusive adjudication of disputed questions of title or to pronounce definitively upon the applicability of confiscation in a manner capable of prejudicing either side in the pending appeal. Such questions require determination upon their proper evidentiary and jurisdictional footing and cannot legitimately be foreclosed

through summary collateral proceedings. The applicant's claim for immediate restoration of the vehicle is, therefore, premature and incapable of being acceded to at the present stage. It is, nevertheless, clarified *ex abundanti cautela* that nothing observed herein shall be construed as a final adjudication either of the applicant's asserted proprietary rights or of the ultimate legality of confiscation. Those questions shall remain open to be dealt with in accordance with law, having regard to the eventual determination of Criminal Appeal No. D-278 of 2024 and any consequential remedy that may thereafter become available to an entitled person.

11. For what has been discussed hereinabove, this Court is unable to discern in the impugned order any jurisdictional infirmity, material irregularity, perversity or presently remediable illegality of such character as would warrant interference in exercise of revisional jurisdiction. The learned Special Court cannot, in the circumstances obtaining on the record, be said to have acted illegally or with material irregularity in declining immediate release of the subject vehicle. Consequently, instant Criminal Revision Application is dismissed, together with all pending application(s). Nevertheless, in order to preserve the subject matter and to ensure that the pending appellate proceedings are not rendered ineffectual, it is directed that vehicle in question shall remain subject to further orders of this Court in Criminal Appeal No. D-278 of 2024 and, until final determination thereof or until a specific order to the contrary is passed therein, shall not be auctioned, alienated, transferred, materially altered, dismantled or otherwise disposed of in any manner whatsoever.

12. The office is directed to place a copy of this order on the record of Criminal Appeal No. D-278 of 2024 for information and appropriate consideration at the time of its adjudication.

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