

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Revision Appl. No. D-19 of 2025

Applicant : Abdul Jabbar son of Ghulam Qadir  
Through Mr. Muhammad Uzair Shaikh, Advocate

The State : Through Mr. Aftab Ahmed Shar, Addl. P.G

Date of hearing : 19.11.2025  
Date of order : 26.11.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** *Instant* revision is directed by the applicant above named, wherein he challenged the order dated 01.03.2025 passed by the learned Additional Sessions Judge-I/MCTC (Special Judge for CNS), Khairpur, which dismissed the application for release of a seized Daewoo Bus (Registration No. BSA-010) on *Superdari* basis, which is involved in Crime No.152 of 2024, for offence under Section 9(d) of CNS Act, 1997 of P.S Shaheed Murtaza Mirani, District Khairpur.

2. The underlying facts reveal that on 05.04.2024, a bus bearing Registration No.BSA-010 was intercepted during police patrolling near Kauser Hospital, Khairpur. During routine checking, twenty packets of *charas* (narcotics) weighing 19,500 grams were recovered from secret cavities of the vehicle. The driver of the vehicle, identified as Shoaib Ahmed son of Muhammad Ibrahim Khoso, was arrested. The bus, registered in the name of M/s Orix Leasing (OLP) Financial Services Pakistan Ltd., Bahawalpur, was seized as case property. The FIR No.152/2024 was registered under Section 9(d) of the Control of Narcotic Substances Act, 1997 (CNSA). Subsequently, the final challan has been submitted by the police, indicating completion of investigation.

3. The applicant, Abdul Jabbar, holds an authorization letter from Mr. Nawabuddin (the lessee and authorized operator of the vehicle), permitting him to act on behalf of the vehicle's owner in the present proceedings. The applicant filed an application under Section 516-A Cr.P.C for release of the vehicle on

*Superdari* basis, which was dismissed by the learned trial court on 01.03.2025. The trial court rejected the application primarily on the grounds that the offence is heinous in nature (punishable with capital punishment), the vehicle was allegedly used in commission of the offence, and there exists apprehension that the vehicle may be altered if released, which could jeopardize the prosecution's case.

4. We have heard the learned advocate for the applicant and learned Addl. P.G for the State, perused the material available on record.

5. The question that lies at the heart of the present revision application is narrow but fundamental that whether a vehicle that is not the subject matter of an offence but merely an instrument for its commission, and wherein the owner is innocent and uninvolved in the offence, can be released on *Superdari* basis subject to appropriate conditions and safeguards, even in cases involving heinous offences such as narcotic trafficking. We now proceed to examine this question in light of the applicable law and established precedents.

6. The jurisprudence of Pakistani Courts has consistently recognized and emphasized the fundamental distinction between property that constitutes the subject matter of an offence and property that merely serves as an instrument for the commission of an offence. This distinction is not merely semantic but carries profound legal implications regarding the rights and remedies available to the owner. Where property constitutes the subject matter of an offence (*for example, stolen goods, counterfeit currency, or property that has been transformed through the criminal act itself*), the State's interest in retaining such property for purposes of investigation, evidence preservation, and ultimate confiscation is paramount. In such cases, courts have consistently held that release on *Superdari* basis is generally not permissible unless extraordinary circumstances warrant such relief. However, where property serves merely as an instrument or conveyance for the commission of an offence, and wherein such property itself is not transformed or modified by the criminal act, the legal position undergoes

a significant alteration. In such cases, the owner's right to release of the property becomes a competing interest that must be balanced against the State's interest in evidence preservation and investigation. The courts have held that in such cases, release on *Superdari* basis may be granted subject to appropriate conditions and safeguards. The present case falls unambiguously within the second category. The vehicle is not the subject matter of the offence but merely a conveyance used for transportation of narcotics. The narcotics were concealed in the vehicle by unauthorized persons without any knowledge or consent of the vehicle's owner or authorized possessor. The vehicle itself was not structurally modified, converted, or customized for the purpose of narcotic trafficking. In contradistinction to vehicles specially designed with hidden compartments for the purpose of trafficking (*where the vehicle itself becomes evidence of criminal enterprise*), the present vehicle had no pre-existing modifications. The secret cavities in which the narcotics were concealed were created by the accused for the specific purpose of this particular crime.

7. In the case of *Commissionerate of Afghan Refugees v. The State* (2024 MLD 1070), the Lahore High Court examined a situation wherein narcotics were found in a vehicle not specially designed or modified for trafficking. The Court held that the owner of the vehicle, being innocent and uninvolved, was entitled to release of the vehicle on *Superdari* basis subject to furnishing of surety and affidavit undertaking. The Court's reasoning was grounded in the principle that confiscatory provisions of the CNSA are not intended to punish innocent owners but are targeted at offenders who intentionally commit narcotic offences. This Court finds the aforesaid reasoning to be sound and applicable to the present case. The distinction drawn by the Lahore High Court is precisely the distinction that applies herein.

8. The Learned Additional Prosecutor General, in advancing arguments on behalf of the State, contended that Section 74 of the CNSA provides for confiscation of vehicles used in carrying narcotic drugs, and that the present

vehicle falls within the ambit of this provision. This Court must now examine the proper scope and application of Section 74 CNSA. Section 74 of the Control of Narcotic Substances Act, 1997, provides as follows:

*"Any person who knowingly permits his conveyance to be used for the commission of an offence under this Act shall be liable to punishment, and any such conveyance shall be liable to confiscation." The legislative intention behind this provision is clear: it is designed to deter owners from permitting their vehicles to be used in narcotic trafficking and to provide the State with a mechanism to confiscate vehicles that have been deliberately placed at the service of traffickers.*

9. However, the critical element in Section 74 is the word *"knowingly"*. The provision applies only where the owner or possessor has knowledge that the conveyance will be or is being used for narcotic trafficking and permits such use despite such knowledge. The provision does not apply to cases wherein the vehicle is misused by unauthorized persons without the knowledge or consent of the owner or authorized possessor. In the present case, the documentary evidence establishes beyond doubt that the Applicant, the lessee, and the registered owner had no knowledge whatsoever that the vehicle would be used for narcotic trafficking. The narcotics were concealed by the accused driver without any authorization from or knowledge of the vehicle's owner or possessor. The Applicant, upon learning of the arrest and seizure, immediately took steps to pursue legal remedies to obtain release of the vehicle. Therefore, the application of Section 74 CNSA cannot be invoked against the Applicant or the vehicle in the present case. The provision, by its own terms, requires knowledge and permission on the part of the owner or possessor, neither of which is present herein. Furthermore, this Court must emphasize that Section 74 CNSA does not contain an absolute bar against release of vehicles on Superdari basis. The provision addresses the ultimate fate of the vehicle (i.e, whether it shall be

confiscated upon conviction) but does not regulate the interim custody of the vehicle pending conclusion of the trial. Interim release on *Superdari* basis is a matter governed by Section 516-A Cr.P.C and is distinct from the question of ultimate confiscation under Section 74 CNSA.

10. The Learned Trial Court, in dismissing the application for release on *Superdari* basis, noted that the offence is heinous in nature, being punishable with capital punishment under Section 9(d) CNSA. The Learned Addl. Prosecutor General, appearing for the State, has similarly emphasized the heinous nature of the offence as a basis for resisting release. This Court must now address the question of whether the gravity or heinousness of an offence constitutes a legal ground for refusing release of property on *Superdari* basis, particularly where the property is not the subject matter of the offence and the owner is innocent and uninvolved. The jurisprudence of Pakistani courts, and particularly the recent pronouncements of the Supreme Court, establish clearly that the gravity of the offence, standing alone and unsupported by other factors, does not constitute a sufficient legal ground for refusing release of innocent third-party property on *Superdari* basis. The Supreme Court, in *Ahsan Ali Dawach v. The State* (2025 SCMR 1041), specifically held that "*Permitting interim custody of a vehicle on Superdari neither amounts to prejudice of trial nor gives a clean chit to the accused. The duration of interim custody may continue subject to bond and surety till the final fate of the case. The person allowed interim custody remains duty-bound to attend, participate, and produce the vehicle as and when directed by the court.*"

11. The Supreme Court's reasoning emphasizes that release on *Superdari* does not undermine the prosecution's case or provide impunity to the accused. The accused remains subject to prosecution, the criminal proceedings remain intact, and the vehicle remains available for production during trial. Interim release of the property does not translate into substantive prejudice to the prosecution's case. Furthermore, the principle of proportionality, which is deeply

embedded in the jurisprudence of Pakistani courts, requires that the measure adopted (indefinite seizure of innocent third-party property) must be proportionate to the legitimate objective sought (investigation and evidence preservation). Where less restrictive means are available (such as *Superdari* with conditions and safeguards), the more restrictive measure cannot be justified merely on the basis of the gravity of the offence. Therefore, this Court rejects the argument that the heinousness of the offence, standing alone, constitutes sufficient legal ground for refusing release on *Superdari* basis. The gravity of the offence must be considered in conjunction with other relevant factors, including the nature of the property, the involvement of the owner, and the availability of adequate safeguards.

12. The document on record clearly establish that the investigating officer has submitted the final investigation report (challan) before the Learned Trial Court. The submission of the final challan signifies the completion of investigation in respect of the accused and all issues of fact requiring investigation. Once investigation is completed and the final report is submitted, the justification for continued seizure of the property on the pretext of ongoing investigation becomes legally untenable. The purpose of seizure of case property during investigation is to preserve evidence, facilitate investigation, and ensure availability of the property for examination by the investigation officer. Once these objectives have been achieved through the completion of investigation, the continued retention of the property without adequate legal justification transforms the seizure into an act of indefinite deprivation. This Court notes that the Learned Trial Court has not articulated any specific investigative purpose that would justify continued seizure of the vehicle. The Trial Court's Order does not state that further investigation is pending or that the vehicle is required for any investigative purpose. The sole basis for continued seizure appears to be the preventive detention of the vehicle pending the conclusion of trial, which is a matter distinct from the investigation. In the absence of any investigative

purpose, the continued seizure of the vehicle must be justified on the basis of other factors, such as the requirement of the property as evidence during trial, or the likelihood of destruction of evidence if the property is released.

13. The Learned Addl. Prosecutor General submitted that the vehicle may be required during trial for purposes of physical confrontation, identification by the accused or witnesses, and demonstration of the location and nature of secret cavities from which the narcotics were recovered. This submission raises the question of whether continued seizure of the vehicle is necessary pending trial to ensure its availability as evidence. This Court is of the view that the requirement of the vehicle as evidence during trial does not necessitate its retention in police custody throughout the pendency of the trial. The vehicle can be released on Superdari basis with the condition that it shall be produced before the trial court whenever required for examination, demonstration, or confrontation. The Applicant has expressly undertaken to comply with all such requirements. Furthermore, the practice in courts across Pakistan demonstrates that vehicles seized in criminal proceedings are routinely released on Superdari basis during the pendency of trial, with the condition that they shall be produced whenever required by the court. The police or prosecution can issue notice to the Applicant requiring production of the vehicle at a specified time and place. The requirement of the vehicle as evidence does not, therefore, necessitate its continued retention in police custody. Therefore, the argument that the vehicle must be retained in police custody for purposes of trial is not compelling in view of the availability of alternative arrangements that are equally effective in ensuring the vehicle's availability during trial.

14. The Trial Court noted that there exists an apprehension that the vehicle may be altered if released from police custody, thereby jeopardizing the interests of the prosecution and the integrity of evidence. The Learned Addl. Prosecutor General has similarly emphasized this concern. This Court acknowledges the legitimacy of the prosecution's concern regarding preservation

of evidence. However, the presence of such apprehension does not, in itself, justify indefinite seizure where adequate safeguards are available to address the concern. The availability of lesser restrictive means to achieve the same objective is a cardinal principle of proportionality and fundamental fairness. In the present case, the Applicant has offered to furnish surety and has undertaken to maintain the vehicle in its current condition and not to alter, modify, or tamper with it pending the conclusion of the trial. Furthermore, this Court can impose conditions such as periodic inspection by court-authorized officials to verify that the vehicle remains in its original state and that no alterations or modifications have been effected.

15. The Learned Advocate for the Applicant has specifically suggested that the vehicle may be marked by the investigating officer, and that any alterations to the vehicle would constitute breach of the Superdari conditions, rendering the Applicant liable to prosecution for criminal breach of trust or tampering with evidence. These safeguards are adequate and proven to be effective in other similar cases. The mere apprehension regarding potential alteration cannot override the established legal principles favoring release on Superdari basis where such safeguards are available.

16. The Learned Addl. Prosecutor General raised the contention that the Applicant lacks sufficient standing to seek release, as he is merely an employee and does not hold title to the vehicle. The Learned Addl. Prosecutor General argued that the proper remedy lies with the registered owner. This Court is unable to accept this argument. The Applicant holds a valid authorization letter from Mr. Nawabuddin, the lessee, conferring upon him the authority to act on behalf of the lessee and to pursue all legal proceedings related to the vehicle. The Applicant is not a mere employee but an authorized representative with specific authority to act in the matter of release and custody of the vehicle. The authorization letter is duly signed and dated and establishes the applicant's authority with clarity. Furthermore, for practical purposes, it is often the case that the registered owner



(in this instance, a financial leasing company) appoints an authorized representative to pursue legal proceedings on its behalf. To deny standing to the authorized representative would render it difficult for owners to obtain relief in practice, as financial leasing companies may not wish to appear directly in criminal proceedings in connection with every instance of misuse of their vehicles. The law permits a person acting with proper authorization to seek remedies on behalf of the true owner. The applicant satisfies this requirement and possesses the necessary standing to seek release of the vehicle.

17. A cardinal principle is that the criminal justice system, whilst being an instrument for the protection of society and the prosecution of offenders, must not be permitted to inflict unjustified hardship upon innocent persons who have had no involvement in the commission of the offence. In the present case, the Applicant, the lessee, and the registered owner are entirely innocent. They have committed no offence. They did not knowingly permit the vehicle to be used for narcotic trafficking. The vehicle was misused by an unauthorized person (the accused driver) without the knowledge or consent of the owner or authorized possessor. These innocent parties should not be required to bear the burden of indefinite deprivation of their property merely because their property was misused by a criminal. The Balance of Convenience doctrine, which this Court is bound to apply in matters of interim relief, requires an examination of the following factors: (1) likelihood of success in the case, (2) irreparable injury if relief is not granted, (3) adequacy of monetary damages as a remedy, and (4) comparative hardship. Applying this test: (1) The Applicant has demonstrated a strong case for release based on established legal principles and precedents; (2) The Applicant will suffer irreparable injury through continued loss of the use and commercial value of the vehicle, deterioration due to exposure to weather, and financial loss due to non-use; (3) Monetary damages are not an adequate remedy, as the vehicle cannot be replaced with money and the loss of business opportunity is irreversible; (4) The comparative hardship to the prosecution is minimal, as the

vehicle can be released subject to Superdari conditions, and the prosecution's case remains intact and unaffected. The Balance of Convenience clearly favors the grant of relief to the Applicant.

18. After comprehensive examination of the facts, the law, the arguments advanced by both parties, and the established precedents, we are satisfied that the Learned Trial Court's Order dated 01<sup>st</sup> March, 2025, dismissing the application for release on *Superdari* basis, is perverse, based on misapplication of law, and does not accord with the established principles laid down by the superior courts. The Trial Court erred in holding that the gravity of the offence, standing alone, constitutes sufficient ground for refusing release of innocent third-party property. The Trial Court erred in applying Section 74 CNSA to a case wherein the owner had no knowledge that the vehicle would be used for narcotic trafficking. The Trial Court erred in refusing to recognize that the vehicle is not the subject matter of the offence but merely an instrument for its commission. The Trial Court erred in disregarding the completion of investigation and the consequent absence of investigative justification for continued seizure. The Trial Court erred in discounting the availability of adequate safeguards and conditions that could effectively address any apprehension regarding preservation of evidence. The Trial Court's Order operates to inflict unjustified and irreparable harm upon innocent parties and cannot be sustained as a matter of law or conscience.

19. For the reasons detailed above, we are satisfied that the Criminal Revision Application merits consideration and is hereby allowed. The impugned Order dated 01<sup>st</sup> March, 2025, passed by the Learned Additional Sessions Judge-I (MCTC), Special Judge for Control of Narcotic Substances, Khairpur, is hereby set aside. The Learned Trial Court is hereby directed to pass fresh orders for the release of the Daewoo Bus bearing Registration No.SA-010 (Engine No. DE12T1954003P, Chassis No. PD15UBH116JD00611, Model Year 2015) to the Applicant or his authorized representative on *Superdari* basis. The release of the

vehicle shall be conditional upon the conditions that Applicant shall furnish solvent surety or personal bond in such amount as may be determined by the Learned Trial Court, not exceeding the estimated fair market value of the vehicle or such amount as the Trial Court deems appropriate. The surety shall be liable to pay the specified amount to the State in the event of breach of the conditions of release. The applicant shall execute and file an affidavit, sworn to before the Court, wherein he shall affirm that he shall not alter, modify, move, dispose of, or transfer the vehicle in any manner whatsoever pending the final decision of Special Case No.202 of 2024. The applicant shall further affirm that he shall maintain the vehicle in its existing condition and shall not permit any person to effect any alterations or modifications to the vehicle's structure or components. The Applicant shall assume full responsibility for the maintenance, safekeeping, insurance, and compliance of the vehicle with all applicable traffic and road regulations, including payment of road tax and registration fees. The vehicle shall be parked at a secure location, and the applicant shall comply with all applicable laws and regulations pertaining to the custody and use of the vehicle. The applicant shall remain duty-bound to produce the vehicle before the Learned Trial Court whenever ordered to do so, for purposes of examination, demonstration, physical confrontation with the accused, or any other purpose deemed necessary by the Trial Court during the trial proceedings. The Applicant shall comply with all directions and orders issued by the Trial Court regarding production of the vehicle. The Learned Trial Court shall retain the authority to inspect the vehicle periodically through any authorized official (including investigating officer, Inspector of Police, or court-appointed bailiff) to verify compliance with the conditions of release and to confirm that the vehicle remains in its original state without any alterations or modifications. The applicant shall cooperate with such inspections and shall permit the authorized official to examine the vehicle at reasonable intervals. The investigating officer or the Trial Court's order shall mark the vehicle and the sealed compartments from which the narcotics were

recovered, in such manner as prescribed by the Court. Any breaking or tampering with such seals shall constitute breach of the conditions of release and shall render the Applicant liable to prosecution for criminal breach of trust and tampering with evidence. The release of the vehicle on Superdari basis shall not prejudice the interests of the State or the prosecution in any manner. The vehicle shall remain case property, and all evidence regarding its role in the alleged offence shall remain available to the prosecution for purposes of trial. The prosecution retains all rights to adduce evidence regarding the recovery of narcotics from the vehicle and to establish the case against the accused or any other accused persons, if any. The vehicle's release does not amount to grant of any relief to the accused. In the event of any breach of the aforesaid conditions by the Applicant, the Learned Trial Court shall be at liberty to cancel the Superdari release, cause the vehicle to be re-seized, and proceed against the Applicant in accordance with law, including for criminal breach of trust and tampering with evidence. The Learned Trial Court is hereby directed to communicate this Order to the relevant police authorities and to cause the vehicle to be released to the applicant within a period of seven days from the date of receipt of this Order, or immediately upon submission of the required surety bond and affidavit, whichever is earlier. The Learned Trial Court is directed to proceed with the trial of Special Case No.202 of 2024 expeditiously and in accordance with law. This Order is to be transmitted to the Learned Additional Sessions Judge-I/MCTC (Special Judge for Control of Narcotic Substances) Khairpur, without delay.

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