

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

## Cr. Revision Application No.S-123 of 2022

[Aijaz Ahmed versus The State& another]

### Date of hearing & Order:

28.10.2022

Mr. Mumtaz Ali Soomro, advocate for applicant

Mr. Shahzado Saleem Nahiyoon, Additional P.G Sindh

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## ORDER

**ADNAN-UL-KARIM MEMON, J-** Captioned revision has been directed against the order dated 24.08.2022, passed by learned Additional Sessions Judge-II Kotri, whereby, the learned Judge has dismissed the application of the applicant filed under Section 516-A Cr.P.C for release of case property/Car.

2. Facts of the case are that an FIR bearing No.312 of 2021 was lodged against the applicant and others at P.S Jamshoro for offenses punishable under Section 395 & 342 PPC, wherein, the applicant and one of the co-accused were arrested and after full dressed trial vide judgment dated 10.08.2022 they were acquitted of the charge by the learned trial Court, whereas case against remaining six absconding co-accused persons was kept on dormant file. After acquittal, the present applicant moved an application bearing No.86 of 2022 under Section 516-A Cr.P.C for release of case property viz: Suzuki Cultus bearing Registration No.AVR-938, Chassis No.PKF-554225, Engine No.SF410PK461098 Model VXR-2011 (**Case Property**); however, the same was dismissed vide impugned order dated 24.08.2022, hence this revision.

3. Mr. Mumtaz Ali Soomro, learned counsel argued that the impugned order is sketchy, ridiculous, and opposed to law and principles of natural justice; that before this, applicant had also applied for release of case property, the same was dismissed by the trial Court vide order dated 17.08.2022 with the observation that since the case against absconding accused is kept on dormant file; therefore, no order for disposal of case property can be passed at this stage; that thereafter applicant moved another application; however, same was also dismissed through impugned order; that it is the duty of police to arrest the absconding accused for finalization of case and applicant cannot be victimized on failure of police to arrest absconding accused; that keeping the case property at police station for an

indefinite period will cause damage to it, as such order for release of the same may be passed.

4. Mr. Shahzad Saleem Nahiyoan learned Additional P.G; however, opposed the revision and submits that the case is still pending against absconding accused; therefore, case property cannot be released at this stage, as the same will prejudice the case of prosecution.

5. I have heard learned counsel for the parties and perused the record with their assistance.

6. The main contention of applicant is that he applied for Superdari of the subject vehicle in terms of Section 517 Cr.P.C which was denied on the ground that the case of the absconder accused has been kept on dormant file and till their arrest the property could not be released.

7. The record reflects that learned trial Court vide judgment dated 10.08.2022 acquitted the applicant under Section 265-H(1) Cr.P.C while the case against the proclaimed offenders was kept on dormant file till their arrest and in the meanwhile, the applicant moved an application under Section 516 Cr.P.C for release of case property viz: vehicle bearing registration No.AVR-938 Suzuki Cultus VXR-211, Chasis No.PKF-554225, Engine No.SF410PK461098 involved in Crime No.312 of 2021 of PS Jamshoro, which application was declined vide order dated 24.08.2022 being not maintainable. Learned counsel has raised the ground that the ownership of the subject vehicle in the name of applicant is not disputed and after his acquittal from the case the subject vehicle was / is required to be released and the same cannot be withheld on the premise that the case against absconders has been kept on dormant file.

8. The application is allowed. The applicant is directed to furnish tangible security and PR bond for superdari of the subject vehicle with the undertaking that he shall produce the same as and when required by the trial Court.

JUDGE

Sajjad Ali Jessar