

47

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Misc. Application No.D-05 of 2017-2

DATE OF
HEARING
14.6.2017.

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objections.
2. For Katcha Peshi.

Mr. Shamsuddin N. Kobhar, advocate for the applicant.
Mr. Sardar Ali Shah, Asst. Prosecutor General.

This criminal miscellaneous application is directed against the order dated 25.4.2017, whereby the learned Sessions Judge/Special Judge, Narcotics, Shikarpur dismissed the Criminal Miscellaneous Application No.153/2017 filed by the applicant under Section 516-A, Cr.P.C for releasing of the vehicle i.e. Toyota Corolla Saloon Car bearing Registration No.ARS-724, Engine No.X.837925, Chassis No.NZE-140.2004162, Model 2008, on superdari in Crime No.136/2016, registered at Police Station New Foujdari, Shikarpur, under Section 9(c) of Control of Narcotic Substances Act, 1997.

2. Briefly stated, facts of the case are that on 10.11.2016 complainant ASI Shahzado Khan lodged the aforesaid F.I.R, alleging therein that on the said date during checking they intercepted aforementioned vehicle which was driven by accused Ghulam Rasool Phulpoto and recovered a bag containing 20 kilograms of Opium in shape of 13 pieces.

3. Learned Counsel for the applicant submits that Abdul Rahman Lakho, the previous owner, sold out the subject vehicle on 27.6.2016 to applicant, then the applicant sold out the vehicle on 29.8.2016 on instalments to one Ali Madad son of Hazoor Bux Chandio in the sum of Rs.11,00,000/- who paid Rs.500,000/- and thereafter he failed to pay remaining amount and informed the applicant that the subject vehicle was lying at New Foujdari Police Station, as the same was shown involved in the aforesaid crime. The learned Counsel



further submits that being owner of the subject vehicle the applicant is entitled for the custody of the vehicle during pendency of the trial on superdari, therefore, he moved an application under Section 516-A, Cr.P.C before the Court concerned but the same was dismissed, hence this criminal miscellaneous application has been maintained by the applicant. The learned Counsel also submits that proviso of Section 74 of the Act of 1997 does not prohibit the release of the vehicle involved in trafficking to its owner, who is not connected in any manner with the commission of the crime or the accused and was unaware that his vehicle was being used for the crime. In support of his contentions, learned Counsel for the applicant has placed his reliance on the cases reported as *Allah Ditta v. The State* (**2010 SCMR 1181**) and *Askari Leasing Limited v. The State* (**2007 P.Cr.L.J 755**).

4. On the other hand, learned APG has fully supported the impugned order. He has stated that the applicant has failed to establish his ownership with regard to subject vehicle, therefore, he is not entitled for obtaining it on *superdari*. In support of his contentions, he has placed reliance on the cases reported as *Qambar Ali and another v. The State* (**2001 M L D 358**) and *Usman Nasir Dar v. The State* (**2009 S C M R 911**).

5. For the sake of convenience, the operative part of the impugned order passed by the trial Court is reproduced as under:

"The report received from I.O indicates that vehicle in question is registered in the name of one Abdul Rehman and it is stated specifically that the applicant is not registered owner of the vehicle as per the official record. The applicant in support of his claim has filed affidavit of Abdul Rehman who is statedly resident of District Ghotki. He has not appeared in person before this Court to affirm the contents of this application. Applicant has filed another affidavit of one Ali Madad whereby it is stated that vehicle was purchased by him from the applicant for which certain amount was paid and about six lac was yet to be paid by him. The wording of such affidavit indicates that vehicle was sold by applicant to said person who in part performance of agreement in hand

Rnt.

paid certain amount to the applicant. Thus from all angles the applicant has not been able to establish his ownership of vehicle."

6. I do agree with learned Counsel for the applicant on the point that proviso of Section 74 of the Act of 1997 does not put embargo on the release of vehicle used for the purpose of transportation of narcotics to its owner, who is not connected in any way with the commission of the crime or the accused, but for obtaining such vehicle on superdari the applicant is under legal obligation to prove his ownership in respect of vehicle used in transportation of narcotics. In the instant case, it is an admitted position that the applicant is not the registered owner of the subject vehicle as per official record and the owner in official record, namely, Abdul Rehman, has not appeared before the trial Court either to affirm the claim of the applicant or to apply for release of subject vehicle on superdari. As such, the applicant having failed to establish his ownership in respect of subject vehicle, cannot make out case for superdari of the subject vehicle.

7. For the foregoing facts and reasons, we do not find any substance in this Criminal Miscellaneous Application, which is dismissed, accordingly.

Quazi Tahir/