

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Misc. Application No.1040 of 2024

For Applicant:	Mr. Javed Rajput, advocate
For Respondent No.1:	Mrs. Hina, the learned APG
Date of hearing:	20.03.2025
Date of judgment:	08.04.2025

JUDGMENT

Jan Ali Junejo, J:-- Through this Criminal Miscellaneous Application filed under Section 561-A Cr.P.C., the applicant seeks setting aside of the order dated 16.08.2024, passed by the learned IInd Additional District & Sessions Judge, Karachi West, whereby the application of the applicant under Section 517-A Cr.P.C. for release of vehicle bearing Registration No. BVH-781 (Toyota Vitz, White Color) was dismissed.

2. Briefly stated, the case arose out of FIR No. 145/2023, registered at PS AVCC/CIA, under Section 9(2)6 of the Control of Narcotic Substances (Amendment) Act, 2022. The complainant SIP Muhammad Ameen Magsi, along with his subordinates, allegedly apprehended the accused Rehan S/o Arshad and others

while they were traveling in the said vehicle. A quantity of 1020 grams of Ice (methamphetamine) was allegedly recovered from accused Rehan, while two other accused were found in possession of firearms.

3. After investigation, the case was sent up for trial. The learned trial court framed charges against the accused, and after recording evidence, acquitted the accused persons vide judgment dated 23-02-2024 whereby confiscated the case property as per charge sheet, which included the vehicle in question. The applicant, being the lawful owner of the said vehicle, moved an application under Section 517, Cr.P.C. for its release, which was dismissed by a non-speaking Order passed by learned trial Court on 16-08-2024, on the ground that the vehicle had already been confiscated.

4. The learned counsel for the applicant contended that the judgment dated 23-02-2024 is silent regarding the subject vehicle and does not mention its confiscation, making the order legally unsustainable. He further argues that the accused persons have already been acquitted, which proves that the prosecution failed to establish any offence, and as a result, the confiscation of the

vehicle has no legal justification. He asserts that the vehicle belongs to the applicant, who had no involvement in the alleged crime, and the police report confirms that it is no longer required for investigation. He maintains that case property cannot be confiscated arbitrarily without proper reasoning, which is absent in this case. He emphasizes that the applicant has provided ownership documents proving her lawful entitlement to the vehicle. In light of the above, he prays that this Honorable Court may allow the Criminal Miscellaneous Application, set aside the impugned order dated 16-08-2024, and direct the release of the vehicle to the applicant.

5. Per contra, the learned APG contends that the vehicle was used in the commission of an offence, making its confiscation lawful and justified. He further argues that the applicant failed to establish her ownership during the trial, and since the vehicle was allegedly used for narcotics transportation, its release would be against the interest of justice. He maintains that the trial court exercised its discretion properly in ordering the confiscation and that such decisions should not be interfered with in revision unless there is a glaring illegality. He asserts that the prosecution charged the accused with narcotics possession while traveling in

the said vehicle, and releasing it may set a wrong precedent. In view of these submissions, he prays that this Honorable Court may dismiss the Criminal Miscellaneous Application, uphold the confiscation order, and decline any relief to the applicant.

6. I have carefully considered the arguments presented by the learned counsel for the applicant and the learned APG, along with a thorough examination of the case record. A close review of the trial Court's judgment dated 23-02-2024 reveals that it contains no discussion regarding the subject vehicle. The judgment neither establishes that the vehicle was used for transporting narcotics nor provides any justification for its confiscation. The mere fact that the accused were traveling in the vehicle does not automatically render it liable for confiscation—a fact that is not even mentioned in the impugned judgment. It is a matter of record that, as per the verification report submitted before the trial Court, the subject vehicle is registered in the applicant's name. Therefore, there was no valid reason to deny her custody of the vehicle. Additionally, the applicant is neither an accused in the case nor involved in the commission of the alleged offense. The trial Court, in its impugned order dated 16-08-2024 and the judgment of acquittal, failed to provide any reasoning for the

vehicle's confiscation. Consequently, the impugned order is legally unsustainable and warrants interference by this Court, as it unjustly deprives the lawful owner of her right to retain custody of her property. Furthermore, Section 32 of the Control of Narcotic Substances Act, which governs the disposal of vehicles used in criminal activities, provides essential guidance in interpreting Section 74 of the Act. The proviso to Section 32 states that a vehicle shall not be confiscated unless it is proven that its owner was aware of its use in the commission of the crime. This provision places the burden on the prosecution to establish such knowledge. Therefore, not only is an innocent owner entitled to the return of the vehicle at the conclusion of the trial, but in the absence of an explicit statutory prohibition, they should also have the right to obtain and retain temporary custody during the trial. Reliance is placed on the case of *Allah Ditta v. The State* (2010 SCMR 1181).

7. In view of the foregoing, this Criminal Misc. Application is allowed. The impugned order dated 16-08-2024 passed by the learned IInd Additional District & Sessions Judge, Karachi West, is set aside, and the vehicle bearing Registration No. BVH-781 (Toyota Vitz, White Color) is ordered to be released to the

applicant, Mst. Rukhsana, subject to execution of a personal bond equivalent to the value of the vehicle to the satisfaction of the trial Court. The Order shall be communicated to the learned trial Court for its compliance forthwith.

JUDGE