

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT**

**Crl. Appeal No. 54/2020**  
**Shahzad Iqbal**  
**Versus**  
**The State etc.**

<b>Appellant by:</b>	<b>Mr. Arif Khan, Advocate</b>
<b>Respondents by:</b>	<b>Dr. Waseem Ahmad Qureshi,</b> <b>Special Prosecutor, ANF</b>
<b>Date of hearing:</b>	<b>06.10.2020</b>

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant criminal appeal, appellant impugns the order dated 19.09.2019, passed by the learned Judge Special Court, CNS, Islamabad, whereby his application for *superdari* of vehicle No.LXX-5687, Engine No.64183, Chassis No.1271340, Isuzu Truck, Model, 1981 (*'the vehicle'*) seized by the A.N.F authorities in F.I.R. No.34, dated 12.02.2019, under Sections 9-C and 15 of CNSA, 1997 was dismissed.

2. Precisely, facts relevant for the disposal of instant appeal are that on 12.02.2019, the staff of A.N.F/R.D North Rawalpindi, received spy information regarding transportation of huge quantity of narcotics in the vehicle. Upon this, a raiding party was constituted and reached the place, pointed out by the informer. At about 13:30 hours, said vehicle coming from Peshawar side reached Islamabad Toll Plaza which was intercepted. Two persons namely Tariq Mehmood and Ghulam were apprehended and on their disclosure 20 packets of chars, weighing 24-Kg were recovered from the tool box of the vehicle, out of which 10 grams for each packet was separated for chemical analysis while the remaining chars along with the vehicle was taken in possession vide recovery memo. During the trial, appellant filed application for *superdari* of the vehicle which was

dismissed vide order 19.09.2020, being assailed through instant criminal appeal.

3. Learned counsel for the appellant that the appellant is a bonafide purchaser and lawful owner of the vehicle; that there is no rival claimant; that its continuous detention in police custody may result in complete deterioration; that neither appellant is accused nor arrayed as witness and that the vehicle is the only source of income of the appellant, therefore, impugned order is liable to be set aside. Learned counsel relied upon case laws reported as, **PLD 2020 Supreme Court 299, 2010 SCMR 1181 and 2008 MLD 1603.**

4. Learned Special Prosecutor, A.N.F supported the impugned order and argued that the vehicle was used in transportation of huge quantity of narcotics and it being case property cannot be handed over to the appellant till conclusion of the trial.

5. We have considered the arguments advanced by learned counsel for the parties and gone through the record available on file.

6. The perusal of record reveals that the vehicle is case property of F.I.R. No.34, dated 12.02.2019, under Sections 9-C and 15 CNSA, 1997. The appellant is neither accused nor a witness to the alleged crime. The appellant is a registered owner of the vehicle while there is also no rival claimant.

7. It is also matter of record that the appellant got registered Rupt No. SR.02/14/2019-653, dated 14.02.2019 regarding missing of the vehicle. It is also specifically mentioned in report under Section 173 Cr.P.C that during investigation, the accused disclosed that the subject vehicle is owned by the appellant and that the appellant had no knowledge of the transportation of narcotics.

8. The Hon'ble Apex Court in the case of "**Allah Ditta V The State**" (2010 SCMR 1181), has graciously held that:-

*"The proviso of Section 32 of the Act, which deals with disposal of the conveyance used in commission of the crime at the conclusion of the trial, also provides a useful tip in interpreting the proviso of Section 74 of the Act. Section 32 empowers the Trial Court to order the confiscation of the vehicle used in trafficking of narcotics, with a proviso that the vehicle shall not be confiscated unless it is proved that the owner was aware that his vehicle was being used in the crime. Not only that an innocent owner of the vehicle is entitled to return of the vehicle but the burden has been placed on the prosecution to establish that the owner had the knowledge of his vehicle being used in the crime. Thus, if an innocent owner of vehicle unaware of the crime is entitled to its return at the conclusion of the trial, as corollary, in the absence of express statutory prohibition, he shall also have the right to obtain and retain its temporary custody pending trial Abdul Salam V. The State (supra).*

*9. We, thus, conclude that the proviso of Section 74 does not prohibit the release of the vehicle involved in the trafficking of narcotics to its owner, who is not connected in any way with the commission of the crime or the accused and was unaware that his vehicle was being used for the crime."*

9. Similarly, the Hon'ble Peshawar High Court in a case "**Shakeel Arshad V The State**" (2008 MLD 1603), has held that:-

*"Admittedly, the petitioner is not accused in the case and nothing is available on the record of investigation of this case so far showing that the petitioner had any knowledge that the accused persons would use his car for committing any offence relating to narcotics and the laws does not place the onus on the petitioner to prove his lack of knowledge in that regard. The rights of the owners who had no knowledge of commission of offence or had no conscious hand in the crime, were fully protected. The Courts have come to the rescue of the owners when their vehicles were used without their knowledge for the commission of offence."*

10. The vehicle is parked in open space, exposed to the vagaries of weather. Its retention in police custody for an indefinite period would achieve no useful purpose.

11. In view of above, the instant appeal is allowed, impugned order dated 19.09.2019, is set aside. Consequently, application of the appellant for superdari of the vehicle is allowed subject to furnishing surety in the sum Rs.5,00,000/- (rupees five lakh) with one surety in the like amount to the satisfaction of the learned Trial Court, who shall ensure that the surety offered by the appellant are local, reliable and men of means. The appellant shall produce the vehicle as and when required/directed by the learned Trial Court. However, this order shall not prejudice the right of a rival claimant, if any, with a better title.

**(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE JUDGE**

A.R. Ansari