

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Criminal Appeal No. 322/2019**

Zafar Ali

**Versus**

The State, etc.

**Appellant by:** Mr. Sher Afzal Khan Marwat, Advocate.

**State By:** Dr. Waseem Ahmed Qureshi, Special Prosecutor ANF.  
Naseer, S.I, ANF.

**Date of Decision:** 06.02.2020.

**MOHSIN AKHTAR KAYANI, J.** Through this criminal appeal, the appellant has assailed the order dated 19.09.2019, passed by learned Judge, Special Court (CNS), Islamabad, whereby application for *superdari* of vehicle bearing registration No.SZ-651-ICT, Toyota Hilux was turned down, which is involved in case FIR No.167, dated 04.08.2019, U/S 9-C/15 CNSA, 1997, P.S. ANF North/RD Rawalpindi.

2. Learned counsel for the appellant contends that appellant is running the business under the name and style of Cars Valley & Rent A Car, near Runway Peshawar and one Afsar Baz S/o Saida Baz took the vehicle in question on rent for two days on 02.08.2019, however, the vehicle was used by the said Afsar Baz in transportation of narcotics and vehicle was impounded on 04.08.2019 vide FIR No.167, dated 04.08.2019, U/S 9-C/15 CNSA, 1997, P.S. ANF North/RD Rawalpindi when two accused namely Baitullah and Mehmood Nawaz were arrested while in possession of 04 Kg Heroin, recovered from secret cavities of the vehicle; that petitioner is lawful

registered owner of the vehicle in the Excise & Taxation department, Islamabad and this aspect has not been considered by the learned trial Court and copy of document submission receipt of transfer of vehicle has been placed on record.

3. Conversely, learned Special Prosecutor ANF contends that vehicle in question was in the name of Irshad Ullah Khan, who has denied the submission of his verification request and as such the vehicle was transferred through fraudulent means before the Excise & Taxation department, Islamabad and the vehicle could not be released in such type of situation.

4. We have heard the arguments and gone through the record.

5. From the perusal of record, it reveals that appellant has applied for *superdari* of vehicle bearing No.SZ-651-ICT, Model 2011 Toyota Hilux, which was taken into custody by ANF in case FIR No.167, dated 04.08.2019, U/S 9-C/15 CNSA, 1997, P.S. ANF North/RD Rawalpindi, which was used for transportation of narcotics weighing 04 Kg Heroin by two accused persons namely Baitullah and Mehmood Nawaz on 04.08.2019, who were arrested by ANF and challan has been submitted in the Court. The petitioner claimed that he is running the business of rent a car under the name and style of Cars Valley and Rent A Car, near Runway Peshawar and subject vehicle was leased out to one Afsar Baz on 02.08.2019 for 02 days, however, said vehicle was used in the transportation of narcotics and same was taken into custody by ANF on 04.08.2019.

6. We have confronted, learned Special Prosecutor as well as I.O regarding status of Afsar Baz, who is stated to be absconder in this case and even ANF verified the original record of Excise & Taxation office, Islamabad, whereby it has been transpired that the owner of the subject vehicle is Irshad

Ullah Khan, who has recorded his written statement with I.O that he has not transferred the said vehicle to Zafar Ali rather it was sold out to one Shahzad Khan on 01.12.2015 and took the categorical stance that he did not know Waheed Ullah or Zafar Ali and disowned his bio-metric verification on the basis of which petitioner has applied for transfer of vehicle, which has not yet been finalized as the original registration book is with Excise & Taxation office, therefore, the entire edifice raised and constructed by the petitioner's side is considered to be an artificial move to achieve the release of subject vehicle on *superdari*, even bio-metric verification of Irshad Ullah (original owner) is *prima-facie* considered to be fake. It is settled law that any instrument, means of transport which have been used in the transportation of narcotics are considered to be case property and are liable for confiscation in terms of Section 32 of CNSA, 1997. Although, it is yet to be proved during the course of evidence, therefore, at this stage the vehicle in question could not be released. Instant appeal is not maintainable and the same is hereby **dismissed**.

7. Before parting with this judgment, it is necessary to pass direction to the Director General, Excise & Taxation, Islamabad for initiation of inquiry regarding biometric verification of Irshad Ullah Khan, the registered owner of the subject vehicle and to submit report to that effect before this Court within period of 30 days. The fate of the vehicle shall be decided by the learned trial Court after recording of evidence in the final judgment as and when the same would be recorded.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**