

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Appeal No. 34 of 2020

Sajjad Akhtar
Versus
The State

S. No. of order/ proceedings	Date of order / proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(04)	29.09.2020	Mr. Haroon Ur Rashid, Advocate for Appellant. Dr. Wasim Ahmed Qureshi Special Prosecutor for ANF. Naseer Ahmed, S.I, ANF

Through this Criminal Appeal, the appellant has assailed the order dated 20.12.2019, passed by the learned Judge, Special Court (CNSA), Islamabad, whereby, appellant’s application for *Superdari* of vehicle bearing Registration No. BJ-381, Toyota Surf, Model 1992 has been turned down.

2. Learned counsel for the appellant contends that he is owner of vehicle No. BJ-381, Toyota Surf which was leased out through rent a car to the accused persons who have transported narcotics substance in the secret cavity of the vehicle, resultantly, FIR No. 182/2019, dated 05.09.2019 under Section 9(c) of CNSA 1997, Police Station ANF RD North, Rawalpindi has been lodged. Learned counsel for the appellant further contends that trial has not yet been concluded and if the vehicle remains under custody of ANF authorities the same would be damaged. On the other hand, the appellant is ready to provide sufficient surety for production of said vehicle in the trial as and when required.

3. Conversely, the Special Prosecutor ANF alongwith the investigation officer contends that appellant is not registered owner of the vehicle and same was registered in the name of one

Sarfraz Ahmed Banday, therefore, the appellant is not entitled for Superdari of the vehicle even the vehicle has not yet been produced before the trial Court, therefore, the appeal may be dismissed.

4. Argument heard record perused.

5. Perusal of the record reveals that application for Superdari of vehicle bearing Registration No. BJ-381 Totoya Surf, Model 1992 has been turned down by the Special Court CNS vide order dated 20.12.2019 mainly on the ground that subject vehicle is case property in case FIR No. 182/2019 dated 05.09.2019 under Section 9(c) of CNSA 1997, Police Station ANF RD North, Rawalpindi, which was used in the transportation of 3-Kilograms of heroin concealed in the secret cavities of the said vehicle by the accused person and the same has not yet been produced in the trial.

6. Learned counsel for the appellant has been confronted to demonstrate the ownership of the appellant qua subject vehicle, whereby, the original registration book has been produced by the appellant before this Court which reveals that subject vehicle has been registered in the name of Sarfraz Ahmed Banday. Copy of the registration book has been placed on record. It has been confirmed by the investigation officer as well as Special Prosecutor ANF present before the Court that the appellant is not registered owner of the said vehicle.

7. In this backdrop, the release of vehicle for *Superdari* has to be considered in terms of Section 74 of the Control of Narcotics Substance Act, 1997, whereby, it is provided that the custody of narcotic drugs, psychotropic substance, controlled substances, any material utensils used for production or manufacture of such drugs or substances ***or any conveyance used in import, export, transport or transshipment thereof or***

for commission of an offence under this Act, shall not be given on custody to the accused or any of his associate or relative or any private individuals till the conclusion of the case. Similarly, Section 32 of the Act *ibid* provides *that no vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that owner has no knowledge of the narcotics having been transported in it or the owner is not connected in any way with the commission of the crime or the accused was unaware that his vehicle was being used for the crime.* Keeping in view the above two provisions, there is no cavil that the vehicle used in transportation of drugs or narcotics is liable for confiscation after conclusion of trial, however there is an exception to the general view that if the owner of vehicle is not associated or related to the crime itself, the vehicle may be released.

8. Wisdom has been conceived from the judgments reported as 2010 SCMR 1181 titled as Allah Ditta vs The State, 2013 YLR 2228 titled as Zewar Khan vs Additional Advocate General, Darul Qaza and another, 2006 P.Cr.R. 493 titled as Muhammad Rafiq vs The State, 2004 P Cr.L J 2060 titled as Shareef Khan vs The State, PLJ 2007 Criminal Cases (Lahore) 539 titled as Askari Leasing Limited vs The State, 2002 PCr.LJ 97 titled as Niaz Ullah vs The State, 1991 MLD 2590 titled as Qaiser Shafeeq Vohra vs The State and another, PLD 2002 Peshawar 87 titled as The State vs Rashid, 2003 SCMR 246 titled as Abdul Salam vs The State, PLJ 2007 Cr.C. (Lahore) 889 titled as Khuram Shahzad vs The State, 2000 SCMR 1945 titled as Altaf Hussain vs Abdul Samad.

9. While considering the above case laws, it has been held that only admitted owner of vehicle is entitled for Superdari subject to fulfillment of condition mentioned in Section 32 of Act *ibid*, however in this case the subject vehicle used in

trafficking of narcotics substances is not registered in the name of appellant, but the same is registered in the name of one Sarfraz Ahmed Banday and this fact has also been conceded by the appellant present before the court, in such eventuality, we are not inclined to release such vehicle, therefore, instant appeal is not maintainable and same is hereby dismissed. However, there is no bar for the trial court to release said vehicle while deciding criminal case through final judgment after considering the evidence regarding ownership of the appellant. The trial Court is at liberty to record the stance of the appellant and independently settle the matter in the final judgment, however, it is expected from the learned trial Court to decide the pending criminal case within period of two (02) months, under intimation to this Court.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE