

NLA.  
Opening sheet for criminal appeal (Under Section 419 Cr.P.C)

IN THE HON, ABLE PESHAWAR HIGH COURT PESHAWAR

Judicial Department

Appellate Side .....Criminal Case No. 163



Criminal Appeal under section 516/517 Cr.P.C/ 48 CNSA 1997.

District	Date Of filing petition	Whether filed by appellant himself or by pleader/Agent	Stamp on petition
Nowshera	<u>/2 /03/2015</u>	<u>Sahibzada Sikander Advocate</u>	-----

**ATTESTED**  
EXAMINER  
Peshawar High Court  
29 FEB 2016

Sahibzada Sikander Khan S/O Shereen Khan R/O Qader Kalla, Naguman, Peshawar.  
.....Appellant.

VERSUS

The State  
.....Respondent.

Appeal from the order of ----- Additional Session Judge/Judge Special Court (v) Nowshera.

Dated-----23/02/2015.

Charge Under Section--- 9© CNSA 1997 R/W 2(S),16. 156(1)(8)(89) Custom Act 1969.

Conviction and Sentence.....(Truck Bearing Registration No.C-9258 Nowshera, was refused to hand over on superdari.

Prayer in Appeal----- To set aside the order of Learned Additional Session Judge/Judge Special Court (v) Nowshera, and to release the vehicle/truck in question on Superdari to the Appellant.

Grounds Of Appeal Attached)

Sahibzada Sikander  
Advocate High Court.  
Peshawar.

**FILED TODAY**  
Deputy Registrar  
**13 MAR 2015**

(3)

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

Cr. A No.163-P of 2015.

**JUDGMENT**

Date of hearing 22.10.2015.

Appellant-Petitioner (Sameen Khan) By

Mr. Owais Ahamad Badri Advocate  
Respondent (C.S.A.) By Muhammad Iqbal Mohr  
Advocate.

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**Peshawar High Court**

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**MUHAMMAD YOUNIS THAHEEM, J.---** Through the instant criminal appeal, the appellant Sameen Khan has impugned the order dated 23.02.2015, passed by the learned Additional Sessions Judge-V/Judge Special Court, Nowshera, whereby the petition for the release of Truck bearing Registration No. C-9258 on Superdari was refused.

2. Brief facts of the case are that the Truck bearing registration No. C-9258 was taken into custody by the local police after recovery of charas weighing 94 Killograms and accused Fazalullah was arrested vide case FIR No. 47/2010 under section 9

(C) CNSA r/w 2(S) 16, 156(1) (8) (89) Customs Act, 1969, Police Station Customs Investigation and Prosecution Branch, Customs House Peshawar. The learned Special Court Nowshera on conclusion of trial convicted the accused Fazalullah, declared co-accused Muhammad Tariq as proclaimed offender and ordered that the case property including the Truck in question shall remain intact till the arrest of absconding co-accused, while on appeal the sentence of accused Fazalullah was reduced to already under gone. The appellant filed petition for release of truck in question on Superdari

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before the learned Additional Sessions Judge-V/Judge Special Court, Noshara, which was refused on 23.02.2015, hence, the instant appeal.

3. Learned counsel for the appellant argued that he is bonafide purchaser of the truck in question and is thus ostensible owner who has no connection with the commission of alleged crime. He further argued that there is no other rival claimant of the same. He went on to say that the condition of Truck is deteriorating day by day. He further added that it is not known as to when the absconding accused Tariq would surrender or arrested for which the Truck

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cannot be kept in custody for indefinite period. He lastly argued that the Truck in question is the only source of income for the appellant and his family and he shall undertake to produce the same before the Court as and when required, if given the truck on Superdari to him.

4. On the other hand learned State counsel opposing the arguments advanced by learned counsel for appellant contended that huge quantity of narcotics has been recovered from the Truck and

co-accused Tariq is still absconding and is the case property. He

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He further added that the learned trial court has ordered case property including the Truck shall remain intact till the arrest and trial of absconding co-accused Tariq. He further argued that ownership of appellant is not above board, hence, he is not entitled for release of Truck on Superdari to him.

5. Arguments heard and record perused.

6. Perusal of the record reveals that admittedly two accused namely Fazalullah and Tariq have been charged for transporting the huge quantity of narcotics from Peshawar to down area through Truck in question. During trial one of the accused namely Fazalullah has been convicted and co-accused Muhammad

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Tariq has been declared as proclaimed offender and the case property including the Truck was ordered to be kept intact till the arrest of absconding co-accused, while on appeal the sentence of accused Fazalullah was reduced to already under gone. In given situation, section 74 of the Control of Narcotics Substances Act provides a bar on release of any such vehicle, which is reproduced as under:

*"74. Application of other laws-If an offence punishable under this Act is also an offence in any other law for the time being in force, nothing in that law shall prevent the offender from being punished under this act:*

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*Provided that nothing contained in section 523 of the Code of Criminal Procedure, 1898 (Act V of 1989), or any other provisions of the said Code or any other law for time being in force, the custody of narcotic 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 individual till the conclusion of the case."*

*3.11.16*  
*[Signature]*

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7. Perusal of above provision of law provides that, where trial is pending and it is yet to be decided whether said vehicle was liable for confiscation or otherwise and any conveyance used in transportation of narcotics, shall not be given in custody to the accused or any of his associate or relative or any private individual till the conclusion of the case. As in the instant case huge quantity of narcotics has been recovered from the Truck in question, the co-accused Tariq is still absconding and the trial against him has not yet

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been concluded and further the appellant is father of accused Fazalullah, hence, he is not entitled for custody of Truck on Superdari.

8. Moreover, the appellant alleged in his application that he is bonafide purchaser of the Truck in question, but he has not annexed any lawful proof in this respect. Iqrarnama placed on file shows that the same has been purchased by his son Fazalullah who was accused in the instant case and transfer letter placed on record also shows the name of original owner namely Sardar Hussain, whereas no name of purchaser has been mentioned in it, hence, the appellant cannot be termed as owner of the vehicle unless declared

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so by competent court of law. The appellant has failed to establish his ownership as well, hence, he is not entitled for custody of Truck on Superdari.

For the reasons discussed above, the instant appeal being bereft of merits is dismissed.

**Announced.**  
**Dt: 22.10.2015**

*Mr. Mazhar Alam*

**CHIEF JUSTICE**

*Dr. Mahmood Yousaf Thakur*

**JUDGE**

*[Signature]*

CERTIFIED TO BE TRUE COPY

Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Qanun-e-Shahadat Order 1984

29 FEB 2016

*office*

*May 02/11/15*