

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Revision Application No.S-58 of 2020

1. For orders on M.A No.5731/20.
2. For orders on office objection.
3. For orders on M.A No.5732/20.
4. For hearing of main case.

31-08-2020

Mr. Manzoor Ahmed Panhwar, Advocate for applicant.

Ms. Rameshan Oad, Asst. Prosecutor General, Sindh.

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ABDUL MAALIK GADDI, J- Through this Cr. Revision Application, applicant has assailed the legality and propriety of the order dated 22.08.2020, passed by the learned Sessions Judge, Tando Muhammad Khan in Miscellaneous Application No.09 of 2020, arisen out of Crime No.223 of 2020 registered u/s 08 of Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019, whereby the trial Court after hearing the parties dismissed the application u/s 516-A Cr.P.C. filed by the applicant for restoration / releasing of vehicle i.e. Honda Civic Car White Colour, Model 2018, bearing Registration No.BNT-769, Engine No.R18Z12940523, Chassis No.NFBFC666XJR043946 on superdari basis.

2. According to the F.I.R, the poisonous material i.e. mainpuries has been recovered from Digi of the said car which was used in transportation of poisonous material. The applicant on the strength of registration documents claimed ownership of the vehicle and filed an application under Section 516-A Cr.P.C before the trial Court for release of the same, but said application was rejected through the impugned order, hence this criminal revision application.

3. Learned counsel for the applicant contended that the applicant is undisputed owner of the subject vehicle and there is nothing on record that applicant is either involved in drug trafficking or was aware about the vehicle being used for such purpose; that the vehicle in question is lying in the police station in the open air and its utility is deteriorating day by day and if not released will seriously damage; that the vehicle is the only source of income of the applicant and

because of taking into possession the vehicle in question, the applicant's family is suffering from starvation. He finally urged that the impugned order passed by the trial Court is not sustainable and prayed for the release of the vehicle in question on superdari basis subject to furnishing solvent surety.

4. Learned Asst. Prosecutor General appearing on behalf of State in some other matters waives notice and half heartedly opposes the instant Cr. Revision Application.

5. Heard arguments. Perused record. It is noted that applicant on the basis of registration book issued by Excise Taxation Department is the lawful owner of the subject vehicle which was detained at police station because of using the same in transportation of mainpuries. It is also noted that accused Farhan, who was allegedly driving the car, has already been granted bail by the trial Court vide order dated 29.07.2020 in the sum of Rs.1,00,000/- [Rupees One Lac] and P.R bond in the like amount and according to the counsel, the accused is on bail but surprisingly the subject vehicle is detained at police station in the open air. During the course of arguments, I have specifically asked the question from learned A.P.G whether this vehicle has been used in such type of crime in past, she has answered in negative therefore, impugned order appears to be passed against the law. Apart from above, no other claimant of the subject vehicle has come forward either before trial Court or this Court.

6. Even otherwise, as per registration book, applicant is the lawful owner of the vehicle in question. Accused Farhan has already been granted bail by the trial Court by observing that the case of the accused Farhan (who was driving the said vehicle) requires further probe. In this scenario question also arises that when case of the accused requires further probe then it also requires evidence whether the subject vehicle was used in the commission of alleged offence or otherwise, but Presiding Officer of the trial Court did not consider this aspect of the case in its true perspective. It is an admitted fact that the applicant is not the accused in the present case nor the prosecution has brought on record any incriminating material to show the knowledge of applicant in respect of the allegedly recovered mainpuries. It is settled law that a vehicle shall not be detained unless it is proved that the owner of the said vehicle was aware that his vehicle was being used in the crime. The case is at initial stage and the vehicle is lying at police station in the open air and its utility

is deteriorating day by day and if the same not released will seriously damaged.

7. For the foregoing reasons, I allow this Cr. Revision Application along with listed applications. Consequently, the impugned order dated 22.08.2020 is set-aside and the custody of the subject vehicle i.e. Honda Civic Car White Colour, Model 2018, bearing Registration No. BNT-769, Engine No. R18Z12940523, Chassis No. NFBFC666XJR043946 is handed over to the applicant temporarily on Superdari basis subject to furnishing / executing personal bonds in the sum of Rs.1,00,000/- [Rupees One Hundred Thousand] to the satisfaction of trial Court. It is made clear that before handing over custody of the vehicle to the applicant, its relevant pictures would be taken and placed on the record. Moreover, the applicant shall produce the vehicle before trial Court as and when directed / required during the course of trial, without fail.

8. Before parting with the order, it is observed that it is the case of allegedly recovered mainpuries, therefore, I expect that trial Court shall proceed the case expeditiously and decide the same as per law as early as possible within a period of sixty (60) working days after receipt of this order and no unnecessary adjournment shall be granted to either side. Compliance report be submitted before this Court through Additional Registrar. Office is directed to immediately send the copy of this order to the trial Court for information and compliance.

JUDGE

****Hafiz Fahad****