

*Judgment Sheet*

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

**Cr. A.No.159-P/2019**

**Hameed Ullah Qureshi Vs The State.**

Date of hearing: 20.08.2019.

M/s Mian Arshad Jan, Khan Muhammad & Shahzad Khan,  
Advocates, for the appellant.

Mr. Kamran Hayat, AAG, for the State.

**JUDGMENT**

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**AHMAD ALI, J.** The instant appeal is directed against the judgment and order dated 20.02.2019 passed by the learned Sessions Judge/Judge, Special Court, Nowshera, whereby application of the appellant for superdari of vehicle (Heno Truck) bearing registration No. LED-18-5525, involved in case FIR No.72 dated 09.02.2019 u/s 9© CNSA, PS Azakhel (Nowshera), was dismissed.

2. Brief facts of the case are that the vehicle in question was taken into custody by the local police in case FIR ibid, being involved in transportation of narcotics.

3. Learned counsel for the appellant submits that the appellant, who is Chief Executive of registered company “Express Logistics” and running business in transportation of various goods since long and services of the accused Javed Abbas and Ibn-e-Hussain were hired as drivers and appellant is the law abiding citizen and never ever

involved in any such like activities; that on the day of occurrence certain goods were loaded in vehicle in question from “Express Logistics” and to this effect builty No.17629 was prepared on 07.02.2019; and the vehicle in question was handed over to the above named two drivers for onward transportation to Peshawar City. The vehicle in question was leased out in the name of “Express Logistics” and appellant was totally unaware regarding involvement of the drivers in smuggling of narcotics. Appellant has joined investigation and the IO recorded 161 Cr.P.C statement of the appellant and it was the appellant who disclosed the names of accused as both the accused mentioned hereinabove were not arrested by the police on the spot and who are still absconding; and the appellant is the lawful and genuine owner of the vehicle having no conscious knowledge about the crime and that there is no rival claimant. Learned AAG representing the state contended that complete challan in the instant case has not yet been submitted and it will be too early to accept the instant appeal; that huge quantity of different narcotics were recovered from the vehicle in question and it will be decided by the learned Trial Court after recording of the evidence what whether appellant was in knowledge of the act of the accused-drivers.

4. We have given our anxious consideration to the submissions made by the learned Counsel for the appellant and learned AAG; and gone through the record of the case with their able assistance.

5. Without dilating upon the question of ownership of the vehicle as the appellant is not the accused in the case. He is asking for the superdari of the vehicle on the ground that he is the owner of the vehicle. Superdari of the vehicle was refused to him by the learned Session Judge/JSC, Nowshera vide his order/judgment dated 20.02.2019.

6. No doubt, Section 74 of the Control of Narcotic Substances Act, 1997 (CNSA) imposes certain conditions on the release of any transport involved in the transportation of narcotics and reads as follows:-

*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";*

*Provided that nothing contained in Section 523 of Code of Criminal Procedure, 1898 (Act V of 1898), or any other provision of the said Code or any other law for the time being in force, the custody of narcotic drugs, psychotropic substance, controlled substance, 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 individual till the conclusion of the case”.*

7. Question for the determination is, as to whether the owner of the vehicle, who is not involved as an accused in the case can be deprived of the custody of the transport involved in the crime until the conclusion of the Trial?

8. Admitted position is that the appellant is the real owner and there is no dispute about it.

9. The forbidding provision of Section 74 of CNSA, 1997 deprives the accused, his associate or relative or any private individual from the pre-trial custody of the vehicle involved which obviously means that the accused or anyone else on his side is excluded in this connection. The term “Private Individual” appeared in the section would also be related to the accused’s side and purpose of adding this term was to deprive any surcum-mention of law by the accused’s side so that any private individual who may not be the relative of accused or the associate of the accused in any legal sense he was connected to the accused otherwise be also kept within the deprived category.

10. The case of the owner of a vehicle who may be running taxi service or rent a car service or where he handed over his vehicle to a driver for running and earn for him as the case in hand; and who has nothing to do with the crime, is not an accused in the case is altogether

different, and the law will have to show its benevolence as far as he is concerned. The interpretation of Section 74 of the CNSA 1997, even if, strictly construed would place such person outside the ambit of forbidding clauses of the section. Otherwise, there would be unjust results for an owner and this cannot be a policy of law.

11. Sections 32 of the CNSA, 1997 reads as under:-

**32. Articles connected with narcotics.—**

**(1) Whenever an offence has been committed which is punishable under this Act, the narcotic drug, psychotropic substance or controlled substance, materials, apparatus and utensils in respect of which, or by means of which, such offence has been committed shall be liable to confiscation;**

**(2) Any narcotic drug, psychotropic substance or controlled substance lawfully imported, transported, manufactured, possessed, or sold alongwith, or in addition to, any narcotic drug, psychotropic substance or controlled substance which is liable to confiscation under sub-section (1) and the receptacles or packages, and the vehicles, vessels and other conveyances used in carrying such drugs and substances shall likewise be liable to confiscation;**

**Provided that no vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be, committed.**

12. Two provisions of the Act deals with the disposal of conveyance used in the commission of the crime. Section 32 provides for final disposal of the conveyance at the time of conclusion of the trial while provision of 74 of the Act

ibid permits the grant of temporary custody of the vehicle pending trial.

13. The present case involves interpretation of the latter statutory proviso. Section 74 is not very happily worded provision and the proviso to the section which deals with the temporary custody of the vehicle involved in trafficking narcotics has no nexus with the main provision of the section which provides for the punishment of the offender for an offence, in addition, to punishable under other statutes. Having said that, proviso, relating to the temporary custody of the conveyance involved in the commission of the offence is couched in negative terms, prohibiting custody to the accused or any of his associate or relative or any other private individual....It follows that the prohibition is neither absolute nor embarrassing. Custody of such a conveyance can be granted to those who do not fall within the said prohibitory, identifying accused or his associate or relative would not ordinarily pose much difficulty. The question that requires determination is whether the owner of the conveyance, who otherwise does not fall in the said class of persons, would come within the mischief of phrase "any private individual". The legislature could not have intended that the said phrase should have such an un restricted wide scope so as to include an "*every individual*" as such a construction would render

meaningless reference to specific persons preceding the phrase. That part of the proviso would thus become redundant. Obviously, the redundancy cannot be attributed to legislature. Thus the only rational meaning to give the phrase “*any private individual*” is to read it *ejusdem generis* with the preceding specific word, accused or his associate or relative.

14. By application of this Rule, the “*private individual*” mentioned in the proviso refers to such individual, who has some nexus with the offender or offence. Thus innocent owner of the vehicle used in commission of the crime, having no nexus, whatsoever, either with the accused or crime, would not fall within the scope of phrase “*private individual*”.

15. The provision of Section 32 of the Act, which deals with the disposal of conveyance used in commission of the crime at the conclusion of trial, also provides a useful tip in interpreting the proviso of Section 74 of the Act. Section 32 empowers the trial court to order confiscation of the vehicle used in trafficking of narcotics, with the 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 the return of 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 commission of the crime. Thus, if an innocent owner of vehicle unaware of the crime, is entitled to its return at the conclusion of trial, has a corollary, in the absence of express statutory provisions he shall also has the right to obtain and retain its temporary custody pending trial.

16. In the instant case, all the ownership documents have been produced by the appellant so much so the names of actual culprits have also been disclosed by the appellant and even after lapse of almost six months, challan has not been put in court.

17. We thus conclude that the proviso to Section 74 does not forbid the release of vehicle involved in trafficking of narcotics to his owner who is not connected in any manner with the commission of the crime or the accused and so unaware that his vehicle being used for the crime. We have also noted that there is no rival claimant of the vehicle. In these circumstances, the appellant is entitled to the temporary custody of the vehicle.

18. Apart from the above, retention of vehicle in police custody for an indefinite period would also not serve any useful purpose.

19. Resultantly, the impugned order/judgment of the learned Sessions Judge/JSC, Nowshera dated 20.02.2019 is set aside and the vehicle (Heno Truck bearing Registration



No.LED-18-5525) is directed to be released on superdari to the appellant provided he furnishes bail bonds in the sum of rupees one million (Rs.1000000/-), with two sureties, each in the like amount to the satisfaction of learned Trial Court. The appellant shall also furnish affidavit to the effect that he will not dispose of the vehicle till final decision of the case; and that he will produce the same before the learned Trial Court whenever required.

**Announced**  
**20.08.2019.**

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