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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Case No. 06/04 Cr. Misc. Petition of 2024

Date of institution: 08.04.2024

Date of decision: 04.05.2024

Date of consignment:

Aashiq Meen son of Ahmad Shah Quom Sturi Khel, Tappa Mulla Khel Miangano Kalay Dakkhana Tazi Khel, Tehsil Lower, District Orakzai (petitioner)

Versus

The State (respondent)

CRIMINAL MISCELLANEOUS PETITION

Order

1. Through this order, I shall decide a criminal miscellaneous petition filed by petitioner against respondent whereby he seeks the return of motorcar registration no. BFR-596, the vehicle in question, on superdari/bail, which was seized through Case FIR No. 20 dated 01.03.2023 registered under section 9-D CNSA of Kalaya Police Station, Orakzai.
2. Concise facts giving rise to the instant criminal miscellaneous petition are that complainant along with police officials on receipt of spy information about smuggling of narcotics through white color motorcar registration no. BFR-596 (**the car**), has arranged barricade at place of occurrence, where, around 0800 hours the above mentioned car approached and stopped by complainant for search; that Imtiaz Khan was driving the car and Zahid Ullah was sitting on front seat of the car; that both persons were bodily searched but nothing incriminating has

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been recovered from their possessions but during cursory interrogation, they disclosed that they had placed the chars in secret cavities made beneath the mudguard of rear wheels; that on their pointation, mudguard of the two rear wheels of the car were opened with screw driver, which led the recovery of 13 packets of chars from secret cavity made near the right side of rear wheel of the car and 12 packets of chars from the left side of rear wheel of the car; that each recovered packets of chars weighed 1000 gram making total quantity to be 25000 grams; that 10 grams chars was separated for FSL from each packet, which were sealed into parcels no. 1 to 25 and the remaining 24750 grams chars was sealed into parcel no. 26; that accused were arrested on the spot, murasila was drafted at the place of occurrence and sent to police station for bringing criminal law into motion; hence, the FIR.

3. The prosecution submitted the challan against accused, however, accused Imtiaz and Zahidullah were acquitted from the charges, whereas, accused Rauf, Irfan and Faid Khan had been declared proclaimed offenders and perpetual warrant of arrests were issued against them with direction to keep the case properties intact till their arrest.

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Now, the petitioner has filed the instant petition to grant him the *superdari* of the motorcar in question.

5. Arguments heard and record perused.
6. Learned counsel for petitioner argued that vehicle in question is the ownership of petitioner. He has purchased the vehicle in question, which was seized in the above referred case but local

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police is misusing the same and shifted to Dera Ismail Khan. There is no rival claimant of the vehicle in question. That the petitioner is law abiding citizen and he will produce the vehicle before the court as and when required and prayed for return of vehicle on *superdari*.

7. On the other side, DyPP for the State resisted the application vehemently. He refuted the arguments advanced by learned counsel for petitioner. He argued that petitioner is not the owner of vehicle in question, therefore, prayed for dismissal of petition.

8. Perusal of record shows that the vehicle (motorcar) in question was taken into possession by the local police in above referred. The car in question is not registered in the name of petitioner nor was he the last possessor. It was recovered from possession of acquitted accused Imtiaz Khan, who disclosed the same to be the ownership of Irfan, Rauf and Faid and they had already been declared proclaimed offenders and perpetual warrants of arrest have been issued against them. Besides, this court in its detailed judgment passed in Case No. 18/3 of 2023 dated 08.01.2024 clearly passed direction to keep the case properties of the case to be intact till arrest and trial of the absconding accused; therefore, its return to petitioner may apprehend loss of evidence.

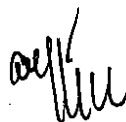
9. As far apprehension of petitioner that local police has shifted the vehicle in question to Dera Ismail Khan and misusing the same, it is held that on receipt of the instant petition, the SHO

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concerned produced the vehicle in question before the court in pursuance to court direction and its reading was noted down through the court official, according to which total travelling mileage of motorcar in question as per Odometer was 244126, therefore, the motorcar in question is returned to the police station, till further order of the competent court, with direction to the SHO concerned to park it safe there and report the court in case of its misuse by anyone.

10. In view of above facts and figures, it is held that petitioner is not entitled to the return of vehicle in question on superdari at this stage; therefore, the instant petition is **dismissed**.
11. Requisitioned record along with copy of this order be returned to quarter concerned. Copy of this order also be forwarded to the SHO concerned for necessary action and file of this court consigned to record room after necessary completion and compilation.



Announced
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(Abdul Basit)
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CERTIFICATE

Certified that my judgment consist of four (4) pages. Each page is signed by me after necessary corrections, where needed.



Announced
04.05.2024

(Abdul Basit)
Additional Session Judge-II,
Orakzai