

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

Cr. Misc. Petition No. 06/04-Neim of 2024

Date of original institution: 08.04.2024

Date of remand: 23.07.2024

Date of decision: 02.11.2024

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)

**APPLICATION FOR SUPERDARI OF MOTORCAR**

**Order**

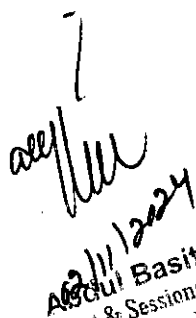
1. Through this order, I shall decide a criminal miscellaneous petition filed by petitioner against respondent whereby he seeks the return of motorcar registration no. BFR-596, the vehicle in question, on superdari/bail, which was seized through Case FIR No. 20 dated 01.03.2023 registered under section 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 detailed car approached and intercepted by the complainant for search; that Imtiaz Khan was driving the car and Zahid Ullah was sitting on front seat of the car; that both

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persons were bodily searched but nothing incriminating has been recovered from their possessions, however, 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 Imtiaz and Zahidullah were arrested and case was registered.

3. Prosecution submitted complete challan against the 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.

Petitioner then filed this petition to grant him *superdari* of the motorcar in question but this court vide order dated 04.05.2024 dismissed his application. Petitioner being dissatisfied with this court decision impugned this court order before the august Peshawar High Court through Cr.R No. 171-P of 2024.

  
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5. The august Peshawar High Court while deciding the petition remanded the case in hands to this court with direction to decide the same afresh on merit, after providing the petitioner opportunity to lead evidence in support of his contention. The case file received. The petitioner along with learned counsel appeared and he has been offered opportunity to lead evidence. Consequent thereto, petitioner himself appeared as PW-2 while recorded the statement of Abdul Hameed as PW-2.
6. Arguments, verbal and written, heard and record perused.
7. Learned counsel for petitioner argued that vehicle in question is the ownership of petitioner, which he has also proved through his statement and documents in his possession. He added that petitioner has purchased the vehicle in question on payment of huge money, which was seized in the above referred case but local police is still misusing the same and shifted to the Dera Ismail Khan. He further argued that 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; therefore, prayed for the return of vehicle on *superdari*.
- On contrary, learned DyPP for the State resisted the application vehemently. He refuted arguments advanced by learned counsel for petitioner and added that had the petitioner owner of the vehicle in question; he must have filed the petition earlier. He argued that ownership about vehicle in question in favour of petitioner is still not proved so prayed for dismissal of petition.

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9. The statements of petitioner and Abdul Hameed studied and documents i.e. purchased deed dated 15.01.2023, Exh.PA; the purchase receipt no. 175 dated: 08.06.2022, Exh.PB; copy of the rent agreement, Exh.PC, and registration file, Exh.PD, relied by petitioner perused carefully and found that though Abdul Hameed stated that he had purchased the vehicle in question from Muhammad Ilyas through open transfer letter in March 2022, which was then allegedly purchased by the petitioner in February 2023; however, the open transfer letter and transfer deed etc. does not provide particulars of the vehicle in question over there nor there is any mentioning of the fact that Abdul Hameed had purchased this vehicle from Muhammad Ilyas and thus petitioner has failed to establish the chain of ownership as how he has become the owner of vehicle in question. More so, Abdul Hameed stated that he had sold the vehicle to petitioner but petitioner in cross-examination stated that he had purchased the vehicle from Abdul Majeed, which reflects that petitioner even did not know the name of person from whom he had allegedly purchased the vehicle.

10. Likewise, if it is presumed that petitioner had purchased the vehicle from Abdul Hameed but admittedly neither the vehicle was registered and transferred in the name of petitioner nor it has been found registered in the name of Abdul Hameed in spite of the fact that he had purchased the vehicle in March 2022 and sold out to petitioner in February 2023 after lapse of more than around one year time, which is against the law.

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11. In reply to a question that as to how the vehicle in question has come into the hands of accused, who had used it for carrying/ transportation of contraband, petitioner remained uncertain and replied that he had rented out the vehicle to Imtiaz on payment of monthly rent of Rs. 100,000/- and in this respect referred a rent agreement, Exh.PC, however, the rate of rent so fixed was found so high, which leads to the apprehension that petitioner had also knowledge about transportation of contraband by the accused in the vehicle in question.

12. Likewise, the vehicle in question was seized by the local police being a case property in March, 2023 but petitioner had waited for disposal of case and applied for its *superdari* after disposal of the case in April, 2024, which further reflects that he had knowledge about the transportation of contraband through the vehicle in question.

13. That both the sale agreement & rent agreement are unregistered documents, whereas, the petitioner has also not produced the original owner and marginal witnesses to these agreements before the court.

14. Besides, record also transpires that motorcar in question was taken into possession by the local police in above referred case, which as per record was not recovered from possession of the petitioner; therefore, he cannot be given any concession of last possessor as well. Likewise, vehicle in question was recovered from possession of acquitted accused Imtiaz Khan, who told to police that it was ownership of Irfan, Rauf and Faid, who had

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already been declared proclaimed offenders and perpetual warrants of arrest have been issued against them, which further raises a factual controversy about actual ownership of vehicle in question and this court acting as a criminal court can neither declare petitioner owner of vehicle in question nor decide the title controversy. As, the vehicle in question was used for transportation of contraband through secret cavities made in it and 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, on one hand, this court cannot go behind its confiscation order, whereas, on another hand, its return to petitioner may apprehend loss of precious evidence.

15. So far apprehension of petitioner that local police has shifted the vehicle in question to Dera Ismail Khan and misusing the same, it has already been held in my previous order that on receipt of the instant petition, the SHO 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, where after, the vehicle in question was returned to 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.

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16. In the backdrop of my above findings, this court reaches to the conclusion that petitioner is not entitled to the return of vehicle in question on superdari; therefore, petition in hands is hereby **dismissed**.
17. Requisitioned record along with copy of this order is returned to the quarter concerned. Copy of this order is again forwarded to the SHO concerned with direction to keep eye on misuse of the vehicle in question and in case of any misuse, proceed as per law.
18. File consigned to record room after necessary completion and compilation.

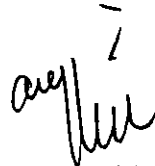


**Announced**  
02.11.2024

(Abdul Basit)  
Additional Session Judge-II,  
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**CERTIFICATE**

Certified that my judgment consist of seven (07) pages. Each page is signed by me after necessary corrections, where needed.



**Announced**  
02.11.2024

(Abdul Basit)  
Additional Session Judge-II,  
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