JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 79 of 2022

ANF

Versus

Adnan Rafique

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Appellant By	:	Sohail Khan Jadoon, SPP (ANF)
Respondent By	:	Muhammad Asghar Ali Mubarak. Advocate
Date of Hearing	:	30.05.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant criminal appeal under section 48 of the Control of Narcotics Substances Act, 1997 **("Act of 1997")**, appellant (*Anti-Narcotics Force-ANF*) impugns order dated 28.04.2021 passed by the learned Judge Special Court, (CNS), Islamabad, whereby the vehicle Registration No. AFC-805, Motorcar, was ordered to be returned to the claimant Adnan Rafique/respondent.

2. Relevant facts are that the subject vehicle is case property of case FIR No. 82 dated 07.06.2018 under Section 9-C and 15 of the act of 1997, registered at P.S. ANF RD North, Rawalpindi, registered against accused Raja Zaheer Akbar Kayani, since convicted. The claimant of the vehicle Adnan Rafique (respondent) filed applications for the return of the said vehicle before the learned Trial Court and this Court as well but remained unsuccessful. On conclusion of the

trial, the accused Raja Zaheer Akbar Kayani was convicted and sentenced vide Judgment dated 16.02.2021.

3. During the trial, before passing an order of confiscation of the vehicle, notice was issued to the claimant/respondent as to why the vehicle may not be confiscated in favour of the State. A show cause notice was also issued to the prosecution that why the vehicle may not be released to its claimant. In response, the respondent submitted reply to show cause notice on 10.03.2022 whereas prosecution submitted a report on 22.03.2021. The learned Trial Court, after appreciating the reply and the report of ANF, vide order dated 28.04.2021 directed for the return of the vehicle to its claimant/respondent, hence instant appeal.

3. Learned Special Prosecutor contended that the vehicle in question was used in transportation of narcotics; that huge quantity of narcotics i.e. 2-kg heroin was recovered from the said vehicle and that Section 32 of the Act of 1997 bars the return of vehicle used in transportation of narcotics, therefore, impugned order is liable to be set aside.

4. On the other hand, learned counsel for respondent repelled the above submissions and prays for dismissal of the instant appeal.

5. Arguments heard, record perused.

6. While scrutiny of the record it is noticed that it was not the case of the prosecution that the respondent/claimant had any nexus with the commission of the alleged offence. The respondent was also not an accused in the subject case. It is an admitted position that the respondent is the registered owner of the subject vehicle with no rival claimant. The knowledge or connivance of the claimant/respondent remained unsubstantiated during the trial, therefore, under the principle, the vehicle was not liable to confiscation.

7. In view of above, the impugned order dated 28.04.2021 is in accordance with law and facts of the case and does not call for any interference. Consequently instant appeal fails and accordingly **dismissed**.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 28.06.2022

JUDGE **JUDGE**

//Kamran//

Not approved for reporting.

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