JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Revision No.16 of 2022

Agha Jan

Versus

The State, etc.

Petitioner By	:	Mr. Sher Afzal Khan Marwat, Advocate.
Respondent By	:	Syed Nazar Hussain Shah, AAG with Gul Rehman, AD FIA (Isb).
Date of Hearing	:	31.03.2022

ARBAB MUHAMMAD TAHIR J. The instant revision petition is arising out of order dated 01.02.2022, passed by the Additional Sessions Judge, Islamabad (West), whereby petitioner's application for superdari of "**vehicle"** (Registration No.AME-075, Toyota CHR) and cash amount of Rs. 66,750,000/- ('**cash amount'**) was dismissed.

2. The petitioner is one of the accused in FIR No. 31, dated 27.09.2021, registered under Section 5,8 & 23 of the Foreign Exchange Regulations Act, 1947 **("FERA, 1947"**) read with section 420, 468, 471, and 109 of the Pakistan Penal Code, at Police Station FIA, Commercial Bank Circle, Islamabad. In addition, case FIR No.41 dated 17.11.2021, under Section 3 & 4 of the Anti-Money Laundering Act, 2010, (**"AMLA, 2010"**) registered at the same Police Station.

3. Relevant facts are that a contingent of ANF, intercepted the vehicle being driven by co-accused Abdul Ghaffar on 13.06.2020 at Motorway M-1, Islamabad Toll Plaza. On suspicion, the vehicle was searched which resulted in recovery of the cash amount. The person intercepted at the relevant time failed to justify the purpose of transporting huge amount of cash to Peshawar. The matter was

then handed over to the FIA. The vehicle and the cash amount were taken into possession vide recovery memo, on the basis of it being involved in illegal business of Hawala/Hundi and money laundering.

4. During investigation, the person from whose possession, the cash amount was recovered disclosed that out of the total amount, PKR 22,500,000 belong to Jalal Khan, who had also been arrayed as accused while the rest is owned by the petitioner and his brother, co-accused Daud Khan and Majeed Khan who, as per record, were also shown to be involved in cases of like nature. Jalal Khan co-accused during the inquiry submitted proof of the amount claimed and thereafter, the learned Trial Court vide order dated 10.03.2022, handed over Rs.22,500,000/- to him as no incriminating material had come on record against the said accused. The application of the petitioner was, however, dismissed vide impugned order.

5. The gist of the submissions advanced by the learned counsel are that petitioner and his brothers are businessman and their banks account reflect that it was not an amount incompatible with their known source of income; that the purpose of transportation was justified as being business deal to purchase share in Dairy Farm; that even otherwise, it is the job of the FBR to inquire into money trail; that no tangible material exists on record while the effect of devaluation of the cash is on higher pedestal than that of the actual loss, therefore, impugned order is liable to be set aside.

6. On the other hand, learned AAG repelled the above submissions by placing judgment of this Court passed in W.P. No. 1184/2021 and W.P. No. 1778 of 2021 whereby said writ petitions seeking quashing of two FIRs registered under Section 4 of the AMLA, 2010 were dismissed.

7. Heard, record examined.

8. Record reveals that the cash amount is allegedly the proceeds of crime and is the subject matter of the two FIRs while the vehicle was allegedly used for transporting the cash amount. The petitioner, as reveals through the record, remained unable to justify possessing of such a huge amount and the stated business transaction for which the cash was being transported.

9. The Hon'ble apex Court in the case of **"*The State through Director General FIA, Islamabad v. Alif Rehman* (2021 SCMR 503**), in an identical matter has graciously observed that "a*s the matter of dealing in foreign exchange is of grave importance, which is also linked with the national interest, an amendment has been brought to section 23 of the .Act on 26.02.2020 whereby after the word 'with' the word 'rigorous' has been inserted in section 23(1) and the punishment for the delinquents who contravene or attempt to contravene or abet the contravention of any of the provision of the Act has been enhanced from 2 years to 5 years."*

10. The *producing unlawful funds* is the primary offence while the money laundering is the predicate offence. The term "predicate offence" is usually used to describe money laundering or terrorist financing activities. Under the AMLA, 2010, the burden of proof relating to proceed of crime involved in money laundering is upon the accused while the burden in the scheduled offence is on the prosecution.

11. In the present case, as per prosecution version, the stance of the petitioner regarding any business transaction has not been established while Jalal Khan, who had been arrayed as co-accused had denied any agreement regarding shares of BK Dairy Farm and further affirmed to have never signed any agreement in any business deal. Therefore, in the attending circumstances, petitioner has not been able to make out a case for interim custody of the vehicle and the cash.

12. Having examined the case from every angle, impugned order dated 01.02.2022 appears to be in consonance with the law and facts and does not call for any interference. Consequently, instant revision petition fails and accordingly dismissed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//