JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CRIMINAL REVISION NO. 48 OF 2025

ABDUL RASHEED KHAN

VS

THE STATE AND ANOTHER

Petitioner by : **Mr. Touqeer Akram, Advocate for the Petitioner**.

Respondents by : **Mr. M. Amin Feroz, Advocate for the Respondents.**
Mr. Muhammad Arshad, Inspector Customs.

Date of hearing : **24.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Revision Petition under Sections 435/439 read with Section 561-A of the Code of Criminal Procedure, 1898 **("Cr.P.C")** the Petitioners/Accused has assailed the Order dated 05.03.2025 **("Impugned Order")** passed by the learned Judge Special Court (Customs, Taxation and Anti-Smuggling) Rawalpindi/ICT whereby the Application regarding handing over articles which were taken into possession by the Investigating Officer in case FIR No. 45/24 dated 28.10.2024 under Section 2(s), 16, 157, 178(i), 156(1), etc. of Customs Act, 1969 **("Subject FIR")** filed by the Petitioner, has been partially allowed.

2. The brief facts of the case as per the Memo of Petition are that the staff of Respondent No. 2 lodged the Subject FIR, pursuant to which the Petitioner was arrested on 10.12.2024, without any stated reason or justification. Following his arrest, the Petitioner was initially placed on remand and was later sent to judicial lockup. Subsequently, the Petitioner filed an application for post-arrest bail, which was duly allowed by the learned Special Judge Customs, Rawalpindi. Thereafter, on 01.02.2025, the Petitioner moved an application seeking the return of certain articles that were taken into custody at the time of his personal search. In response to this Application, the Investigating Officer submitted a Report dated 05.03.2025. On the same date, the learned Special Judge Customs, Rawalpindi, while partially allowing the application vide the Impugned Order, ordered the return of the

Petitioner's CNIC only and declined to return other articles, including a vehicle bearing Registration No. DH-688 (Corolla), mobile phones Samsung (two), SIM Cards, ATM Card, Driving License, CSD Card, Wallet, Registration Book (Vehicle No. DH688), Army Card, Cash Rs. 8500/- and various other personal belongings. Aggrieved of the Impugned Order, the Petitioner has preferred the instant Revision Petition before this Court.

3. The learned counsel for the Petitioner submits that the Impugned Order, to the extent it pertains to the seized articles, is illegal, unlawful, and without lawful authority. It is argued that the learned Special Judge failed to provide any reason or justification for denying the return of the Petitioner's personal belongings, which are neither instrumental in the commission of any offence nor required for the purposes of trial. It is further submitted that the vehicle and other items were clearly documented in both the *Fard Baramadgi* (memo of recovery) and the *Fard Jama Talashi* (memo of personal search), yet no legal basis has been provided for their continued retention. The learned counsel emphasized that Sections 516-A and 523, Cr.P.C. govern the custody and disposal of property and do not support the refusal to release items that are not directly involved in the commission or proof of the alleged offence. It was contended that the Impugned Order amounts to a misreading and non-reading of the record, and reflects a failure on the part of the learned Special Judge to exercise jurisdiction properly vested in it. The learned Special Judge, according to the Petitioner’s counsel, acted in a post-haste and arbitrary manner, thereby passing an order that is unsustainable in the eyes of law. For the foregoing reasons, the learned counsel prayed for setting aside the Impugned Order to the extent it denies the return of the seized articles, and that possession of the same be restored to the Petitioner, subject to any terms this Court may deem appropriate.

4. The learned counsel for the Respondents has vehemently opposed the instant Criminal Revision Petition, submitting that the Impugned Order, passed by the learned Special Judge (Customs, Taxation and Anti-Smuggling), Rawalpindi, is well-reasoned and in accordance with law. It is argued that the articles retained by the Investigating Officer, including the vehicle bearing registration No. DH-688 (Corolla), mobile phones, SIM cards, ATM and Army card, cash, and other

personal items, were taken into custody in connection with the Subject FIR. The learned counsel contended that the seized articles form part of the case property and are potentially relevant for investigation and trial; that the continued retention of such articles is necessary to establish the chain of events, ensure transparency of the investigative process, and secure the production of key evidence before the trial court; that the Petitioner's assertion that the items are unrelated to the alleged offence is a question to be determined at the conclusion of the trial and not at the preliminary stage of the investigation; that the vehicle and other articles are not merely personal belongings, but items that may bear evidentiary value, either directly or circumstantially, in relation to the charges under the Customs Act; that the Investigating Officer has duly submitted his report, wherein reasons have been set out for the non-return of the articles in question; that the learned Special Judge, after considering the same, partially allowed the application by directing the return of the CNIC and rightly declined to release the remaining articles in view of their potential evidentiary significance; and that the exercise of discretion by the learned Special Judge was neither arbitrary nor capricious and does not warrant interference by this Court in revisional jurisdiction. In view of the foregoing, the learned counsel for the Respondents prayed for dismissal of the present Criminal Revision Petition as misconceived and devoid of merit.

5. I have heard the learned counsel for the parties and have also perused the available record with their able assistance.

6. After hearing the learned counsel for the parties and carefully examining the record, this Court is of the considered view that the Impugned Order warrants interference to the extent it denies the return of the Petitioner's seized personal belongings. It is undisputed that the articles in question, including mobile phones, SIM cards, ATM and Army Card, Wallet, cash amounting to Rs. 8,500/-, driving license, vehicle registration book, and particularly the vehicle bearing Registration No. DH-688 (Corolla), were taken into custody at the time of the Petitioner's arrest and are not alleged to be proceeds of crime, instrumentalities of the alleged offence, or items otherwise linked to the commission or proof of the offence under the Subject FIR. The record reflects that the aforementioned vehicle and items were recovered from the Petitioner during a personal search and were subsequently

listed in the *Fard Jama Talashi* and *Fard Baramadgi*, but no material has been placed on record by the Investigating Officer to demonstrate that the said articles are case property or bear any direct or indirect nexus with the alleged offence. Mere seizure or possession at the time of arrest, in the absence of a specific connection to the offence, cannot justify continued retention, particularly when such retention amounts to curtailment of the Petitioner's liberty and property rights.

7. It is a settled principle of law that under Sections 516-A and 523 of the Code of Criminal Procedure, 1898, articles that are not essential for the purposes of investigation or trial and do not form part of the case property ought not to be unnecessarily withheld, especially when such items are admittedly of personal use. The retention of such articles, without legal justification or evidentiary value, amounts to an arbitrary exercise of discretion.

8. Accordingly, the instant Criminal Revision Petition is **allowed** and the Impugned Order dated 05.03.2025 is set aside to the extent it denies the return of the aforementioned items. The Respondents are directed to release the seized personal belongings of the Petitioner, including the vehicle bearing Registration No. DH-688, subject to furnishing surety bonds in the sum of Rs.100,000/- (one lac) to the satisfaction of the learned Trial Court, preferably within seven (07) days from the date of this order.

(MUHAMMAD AZAM KHAN)
JUDGE

Adnan