

ORDER SHEET

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Constitution Petition No.S-150 of 2025**

*(Javed Ali v. PO Sindh and Ten (10) Others)*

**Petitioner**

Javed Ali : Through Mr. Anwar Ali Lohar  
Advocate.

**Respondents:**

1. Province of Sindh,  
Through Secretary Home Department,  
Sindh Secretariat Karachi.
2. Deputy Inspector General of Police,  
Sukkur Division Sukkur.
3. Senior Superintendent of Police,  
District Ghotki.
4. Station House Officer,  
Police Station A-Section Ghotki,  
District Ghotki.
5. SIP Mehrban Ali Kolachi,  
Investigation Officer, Cr.No. 94/2025,  
PS "A" Section Gkhotki.
6. Safdar,
7. Mashooque,
8. Bhooral,
9. Nadir,
10. Niaz,  
All sons of Ghulam Muhammad
11. Abdul Ghaffar s/o Bhooral

All by caste Bozdar, R/o Village Hayat Pitafi,  
Taluka Mirpur Mathelo, District Ghotki.

**Detainee:**

Mst. Shahneela (sister of petitioner)  
Aged about 15/16 years.

Date of hearing : 10.07.2025.

Date of Order. : 21.07.2025.

**ORDER**

**Jawad Akbar Sarwana, J.:** On 16.06.2025, the petitioner, Javed Ali s/o Ghulam Yaseen, filed this petition before the Regular Bench of the High Court at Sukkur seeking directions that the Official Respondent Nos.2 to 5, recover and produce his missing sister, Mst. Shahneela, from the alleged

custody of the Private Respondent Nos.6 to 11. After hearing the Petitioner's Counsel, the bench reserved the petition on maintainability.

2. The brief facts are that the petitioner claims that on 29.03.2025, his sister was allegedly kidnapped by the Private Respondent Nos.6 to 11, leading to the registration of FIR No.94/2025 at PS A-Section, Ghotki u/s 452, 365-B, 337-f(i)PPC and 3 of TIP Act, 2018, but no progress was made. Furthermore, subsequently, when the petitioner and his Uncle made efforts on their part to recover his sister, it led to filing to the second FIR against the Respondents/accused and others, that is, FIR No.20/2025 at PS Jarwar u/s 324 PPC.

3. With no progress viz. the recovery of his missing sister, the petitioner filed Cr. M.A. No.40/2025 against the Official Respondents and Private Respondents/accused (impleaded in this lis) before the Court of 1st Additional Sessions Judge, Mirpur Mathelo under Section 491 Cr.PC. The Sessions Court, vide its Order dated 26.06.2025, dismissed the said application on the grounds that the investigation under two FIRs was still pending, the detainee was not found, and with directions to the Official Respondent No.2-5, to make efforts for the safe production and appearance of the detainee.

Article 199(1)(a)(i) of the 1973 Constitution

4. The Petitioner/Petitioner's Counsel filed with this petition a Statement dated 16.06.2025, available on record, that this lis is filed under Article 199(1)(a)(i) of the Constitution of Pakistan, 1973 ("the 1973 Constitution"). If this is/was the case, then this Regular Bench cannot hear the matter after the creation of the division within the High Court by the Constitution (Twenty-sixth Amendment) Act, 2024 (Act No.XXVI of 2024)(hereinafter referred to as "the 26th Constitutional Amendment") creating an assignment given to special benches (judges) of the High Court declared by the Judicial Commission of Pakistan as "Constitutional Benches" under Articles 175 and 175A read with Article 202A of the 1973 Constitution.

5. When this bench put the above Statement before the Petitioner's Counsel in reply, he submitted to this bench a photocopy of the certified copy of the Sessions Court Order dated 26.06.2025, and argued that this

petition is/was maintainable before the Regular Bench, too. He submitted that this lis may be deemed to be filed under Article 199(1)(a)(ii). Secondly, he contended that this bench is/was competent to decide the petition under Section 491 Cr. P.C. also. Third and lastly, he argued that the Regular Bench may grant relief to the Petitioner under Article 199(1)(b)(i) of the 1973 Constitution.

Article 199(1)(a)(ii) of the 1973 Constitution

6. When Petitioner Counsel pleaded Article 199(1)(a)(ii) of the 1973 Constitution, this bench asked Counsel to identify any reference to the Sessions Court Order dated 26.06.2025 mentioned in the facts of the case as set up in the petition. In fact, the aforesaid Order is/was not filed with the petition, and none had been/was available until Petitioner's counsel submitted the same to this bench. Further, no allegation/averment is/was raised in the grounds of the petition. Nothing was articulated to show that the Sessions Court Order dated 26.06.2025 is/was "without lawful authority" and "of no legal effect". There is/was also no prayer for setting it aside except for the omnibus prayer clause praying for any other relief deemed fit and proper by this Court.

Section 491 Cr.P.C.

7. Regarding Petitioner Counsel's submission that this lis may be treated as an application under Section 491 Cr.P.C., the matter before this Court is in writ jurisdiction and not ordinary criminal jurisdiction. Thus, while Section 491 Cr.P.C. concerns the power to issue directions of the nature of a habeas corpus, such relief may only be granted within its statutory framework. One of the reliefs sought by the Petitioner (brother) is for the production of his sister from the illegal private detention/private custody as distinct from custody under orders of a public functionary. The Regular Bench, given the reasoning articulated in the recent unreported judgment of the Full Bench of the High Court dated 22.04.2025 in Syed Sahir Hasan v. The Province of Sindh and Others (Constitutional Petition No.D-937/2025) ("the Syed Sahir Hasan case"), in the facts and circumstances of the case, may not be ideally suited, to hear the lis at par with the Constitutional Bench having all the powers under Article 199 of the 1973 Constitution.

Article 199(1)(b)(i) and (c) of the 1973 Constitution

8. While the powers of Section 491 Cr. P.C. may be co-extensive/concurrent with Article 199(1)(b)(i) and (c) of the 1973 Constitution, the remedy under Article 199 is a constitutional remedy which cannot be taken away, whereas the remedy under Section 491 Cr. P.C. can be taken away on technical grounds. Thus, writ jurisdiction under Article 199(1)(b)(i) and (c), is at a higher pedestal and a much broader and wider remedy than the one provided under Section 491 Cr. P.C. The constitutional remedy has two further aspects, that is, Article 199(1)(b)(i) and Article 199(1)(c). Here, too, it may be noted, following the Full Bench Judgment of the High Court in the Syed Sahir Hasan case (ibid.), that after the 26<sup>th</sup> Constitutional Amendment, the Regular Bench is constrained to examine issues arising out of Articles 199(1)(a)(i) and (c).

9. As discussed hereinabove, it is not at all clear from the petition whether the Petitioner (brother) is seeking relief of his missing sister, Shahneela (the detainee), under Article 199(1)(a)(i) for directions against a person performing functions in connection with the affairs of a Province to do what they are required by law to do, that is, be it the SHO of the two concerned Police Stations, or the I.O. in the two FIRs lodged against the Private Respondent/accused? Or, is he challenging, as he argued in Court under Article 199(1)(a)(ii), that the Sessions Court Order dated 26.06.2025 disposing of the Section 491 Cr. P.C. application without giving directions within the contours of Section 491 Cr. P.C. to the Police Authorities to produce his sister, regardless of the investigation underway under the two FIRs, tantamounts to an order “without lawful authority” and “of no legal effect”? Or, is he invoking Article 199(1)(b)(i) for directions from this Regular Bench to produce his sister from the custody of the Private Respondents/accused? Or, is he seeking positive directions under Article 199(1)(c) for enforcement of any of the Fundamental Rights conferred under Article 8 (security of persons), Article 9 (safeguards as to arrests and detention), Article 14 (inviolability of the dignity of man), etc. for the production and release of his sister, who is, as per the documents available in the Petition, is apparently married to one of the Respondents?<sup>1</sup>

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<sup>1</sup> A hypothetical scenario similar to the present case is discussed without any opinion in paragraph 32 of the Judgment of the Division Bench dated 02.12.2024 in the Attock Cement Pakistan Ltd. and others, (CP No.D-1590/2023), viz., petition for missing person or free will or habeas corpus – Constitutional Bench or Regular Bench?

10. Indeed, as this is a Regular Bench of the High Court, and the case at hand, involves overlapping issues under Article 199, therefore applying the principle laid down in the Syed Sahir Hasan case (ibid.), which Full Bench Judgment is binding on this Court, in the facts and circumstances of the case, this is, with the Petitioner knocking on the door of this Court alleging a range of remedy/relief from the High Court from habeas corpus to mandamus to certiorari to Article 199(1)(c) of the 1973 Constitution to Section 491 Cr. P.C., as discussed above, will be better suited to be decided by the Constitutional Bench, which can exercise powers in respect of Article 199 of the 1973 Constitution in the broadest sense. Indeed as per the Judgment of the Full Bench of the High Court, post 26<sup>th</sup> Constitutional Amendment of the 1973 Constitution, and incorporation of Article 202A(3), no Bench of a High Court other than the Constitutional Bench can exercise powers under the Roster vested in the High Court under Article 199(1)(a)(i) and (c) of the 1973 Constitution and in that case a Regular Bench cannot hear and enforce matters concerning the said Articles, which Articles are also overlapping and the applicability of the precise sub-article of Article 199 of the 1973 Constitution remains to be decided by the Constitutional Bench. Therefore, as per the wisdom of the Full Bench of the High Court in the Syed Sahir Hasan case (ibid.), if for some reason there is a case which has some overlapping issues falling within a larger and broader perspective under Article 199(1) of the 1973 Constitution, then the Constitutional Bench can always hear such a case as it is not denuded with such powers. The Judges of Constitutional Benches, therefore, can always exercise powers under their Roster, as and when required, while hearing a particular case in respect of Article 199(1)(a)(ii) and (b) as well.<sup>2</sup>

11. Given the above, the Regular Bench cannot hear this matter. The Petition must be heard by a Constitutional Bench and not by a Regular Bench.

12. Let this matter be fixed before a Constitutional Bench in the coming week.

J U D G E

Shafqat dayo

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<sup>2</sup> Also see Full Bench Judgment of the High Court dated 22.04.2025 in Muhammad Shoaib Palijo & Ors v. Province of Sindh & Others, CP No.D-508/2023 along with C.P. No.D-509, 1080, 1105, 1587, 227, 2736, 3978, 4308, 5087 and 5422 of 2023.