

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro**

CONSTITUTION PETITION NO. D- 1613 OF 2025

Petitioners 1) Inayat Ali : through Mr. Amir Mansoob
2) Danish Ahmed : Qureshi, Advocate

Respondents : through M/s. Sajjad Ahmed Chandio
Kazim Hussain Mahisar and
Ms. Faiza Obaid.

Official Respondents : through Ms. Shazia Hanjra,
DAG and Mr. Faizan Hussain
Memon, Addl. AG

Date of hearing : 09.06.2026

Date of Judgment : 30.06.2026

ORDER

Nisar Ahmed Bhanbhro, J.- Through this petition, petitioners have claimed following relief:-

- i) *To declare that FIR bearing No.21/2024 under section 201, 364, 302, 34, 147, 148, 149, and 12-B of Pakistan Penal Code R/W Section 7 ATA 1997 and Section 8 and 9 of the Torture and Custodial Death (prevention and Punishment) Act, 2022 at police Station FIA Composite Circle Mirpurkhas is illegal, ultra-vires, and is in violation of well settled principle and judgments of the Hon'ble Supreme Court of Pakistan in the landmark case of Mst. Sughran Bibi Vs The State (PLD 2018 Supreme Court 595)*
- ii) *To Quash FIR bearing No.21/2024 under section 201, 364, 302, 34, 147, 148, 149, and 12-B of Pakistan Penal Code R/W Section 7 ATA 1997 and Section 8 and 9 of the Torture and Custodial Death (prevention and Punishment) Act, 2022 at police Station FIA Composite Circle Mirpurkhas against the Petitioner.*
- iii) *To direct the Respondent No. 5, to dispose of FIR bearing No.21/2024 under section 201, 364, 302, 34, 147, 148, 149, and 12-B of Pakistan Penal Code R/W Section 7 ATA 1997 and Section 8 and 9 of the Torture and Custodial Death (prevention and Punishment) Act, 2022 at police Station FIA Composite Circle Mirpurkhas and continue investigation in initial FIR No. 47/2024, lodged at Police Station Sindhri.*

- iv) *To Suspend the operation of Investigation in respect of FIR bearing No.21/2024 under section 201, 364, 302, 34, 147, 148, 149, and 12-B of Pakistan Penal Code R/W Section 7 ATA 1997 and Section 8 and 9 of the Torture and Custodial Death (prevention and Punishment) Act, 2022 at police Station FIA Composite Circle Mirpurkhas during the pendency of this Petition.*
- v) *Restrain the respondents No. 2 & 5, their officers, staff and any other person acting directly or indirectly on their behalf from arresting the petitioners named in the FIR bearing No.21/2024 under section 201, 364, 302, 34, 147, 148, 149, and 12-B of Pakistan Penal Code R/W Section 7 ATA 1997 and Section 8 and 9 of the Torture and Custodial Death (prevention and Punishment) Act, 2022 at police Station FIA Composite Circle Mirpurkhas till the final disposal of the instant petition.*
- vi) *Cost of the petition."*

2. It is the case of the petitioners that they are serving in Sindh Police with unblemished service records and earned promotions based on merit and performance. FIR No. 21/2024 was lodged on 29.10.2024 at FIA Composite Circle Mirpurkhas regarding an incident allegedly occurring in the intervening night on 18-19.09.2024. The petitioners surrendered before the Anti-Terrorism Court, Mirpurkhas, and were granted ad-interim pre-arrest bail on 31.10.2024. Prior to FIR No. 21/2024, FIR Nos. 45/2024 and 46/2024 had already been registered at Police Station Sindhri concerning a police encounter in which Shahnawaz was killed, and charge sheets were submitted. Thereafter, Respondent No. 6 lodged FIR No. 47/2024 regarding the same incident. Constitutional Petition No. 1326/2024 was filed before the Sindh High Court seeking a judicial inquiry into the alleged fake encounter and related reliefs. During the proceedings, the petitioners sought transfer of the investigation of FIR No. 47/2024 under the Torture and Custodial Death (Prevention and Punishment) Act, 2022. Separate constitutional petitions challenging FIR No. 47/2024 were dismissed by the Sindh High Court on 21.10.2024. The High Court directed that the investigation of FIR No. 47/2024 be transferred to the FIA. Despite this direction, Respondent No. 5 allegedly registered FIR No. 21/2024 concerning the same incident, which the petitioners contend is a second FIR and contrary to the High Court's order.

3. Learned counsel for the petitioners has contended that the impugned FIR No. 21/2024 is illegal, unlawful and void ab initio, being in violation of Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantee due process, fair trial and protection in accordance with law. The complainant falsely stated that FIR No. 21/2024 was registered

pursuant to the order dated 21.10.2024 passed in CP No. D-3126/2024, whereas the said order merely directed transfer of investigation of FIR No. 47/2024, P.S. Sindhri, to the FIA and did not authorize registration of any fresh FIR. Section 5(1) of the Torture and Custodial Death (Prevention and Punishment) Act, 2022 confers exclusive jurisdiction upon the FIA to investigate offences under the Act. The statutory mandate was limited to conducting investigation in FIR No. 47/2024 and did not empower the FIA to register a second FIR regarding the same occurrence. He next contended that the order dated 21.10.2024, as well as subsequent orders passed by the Hon'ble High Court, consistently directed transfer of investigation of FIR No. 47/2024 to the FIA. He further submitted that registration of FIR No. 21/2024 is therefore in direct violation of the Court's directions. It is a settled principle of law that there can be only one FIR in respect of one occurrence. Hon'ble Supreme Court of Pakistan in the case of *Mst. Sughran Bibi v. The State* (PLD 2018 SC 595) held that a subsequent FIR relating to the same incident is without lawful authority and liable to be quashed. It is submitted that any subsequent facts, evidence or versions emerging during investigation were required to be incorporated in the original FIR through the investigative process and statements recorded under Section 161 Cr.P.C., rather than through registration of a fresh FIR. The registration of FIR No. 21/2024 defeats the object and scheme of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, creates duplication of proceedings, and amounts to an abuse of the process of law. He has argued that the impugned FIR has subjected the petitioner to unnecessary harassment, multiplicity of proceedings and prejudice, thereby violating his constitutional right to fair trial and due process. That FIR No. 21/2024, being contrary to the Constitution, statutory provisions, binding judicial precedents and the order dated 21.10.2024, is liable to be declared illegal, without lawful authority and quashed by this Hon'ble Court. In support of his contentions he has placed reliance on the cases of *Naseem Anjum v. Director General, FIA, Islamabad* (2023 YLR 701), *Zeeshan @ Shani v. The State* (2012 SCMR 428), *Multiline Associates vs. Ardeshir Cowasjee & Ors.* (PLD 1995 SC 423), and *Mst. Sughran Bibi v. The State* (PLD 2018 SC 595) as well as an unreported order passed in Const. Petition No.D-5428 of 2025 passed by this Bench on 08.04.2026. He prayed to allow this petition.

3. Learned DAG assisted by the learned counsel for the Complainant Muhammad Ibrahim contended that FIR No. 21/2024 was registered lawfully

and the investigation was conducted strictly in compliance with the order dated 21.10.2024 passed by the Honorable High Court of Sindh in C.P. No. 1326/2024. No violation of law of the said order has been committed. The Petitioners have misconstrued proceedings and raised only technical objections. The instant petition is misconceived and has been filed solely to impede and delay the ongoing Trial, without pointing out any legal defect in the registration of FIR or investigative process. She further contended that investigation was conducted in accordance with applicable law and the principles laid down by the Honorable Lahore High Court in *Zubaida Qureshi v. Ex-Officio Justice of Peace* (W.P. No. 1359/2024) case, wherein it was held that proceedings under the Torture and Custodial Death (Prevention and Punishment) Act, 2022 constitute an independent remedy and are not barred by registration of a police FIR or the principle laid down in *Sughran Bibi case*. She further submits that all the other FIRs were canceled and Petitioners were facing trial in FIR No 21/2024 only and if this FIR is quashed, it will amount to acquittal of the accused that killed a person while he was under custody. She, therefore, prayed that this petition is devoid of merits, based on misinterpretation of law and facts, and is liable to be dismissed. In support of her contention She has placed reliance on the case of *Director General, Anti-Corruption Establishment Lahore & Ors. v. Muhammad Akram Khan & Ors.* (PLD 2013 SC 401), *Naveen Jatoi v. Province of Sindh & Ors.* (2025 P Cr. L J 601), *National Accountability Bureau v. Mst. Zahida Sattar & Ors.* (PLD 2001 Karachi 256), *Burewala Textile Mills Ltd. Burewala v. Zeenat Textile Mills Ltd. Lyallpur & Ors.* (PLD 1978 Lahore 305), *National Petrocarbon (Pvt.) Ltd. & Ors. v. Registrar of Trade Unions & Ors.* (1989 CLC 1975).

4. Heard arguments and perused the material available on record.

5. The controversy involved in the present petition pertains to the registration of multiple FIRs for same incident. It transpired that one Shah Nawaz Kunbhar was allegedly arrested in injured condition in a police encounter within the jurisdiction of Police Station Sindhri, District Mirpur Khasand one unlicensed weapon was also recovered from him. Two separate FIRs No 45 and 46 of 2024 were recorded at police station Sindhri. Shah Nawaz Kunbhar succumbed to injuries, this triggered a wave of protests across the country blaming the killing in a fake encounter. The preliminary inquiry proved the encounter fake, therefore an FIR No 47/2024 was recorded by Complainant Muhammad Ibrahim Kunbhar against the Police Officers

under section 364, 302, 120B, 201, 148, 149, PPC and 6 - 7 ATA at Police Station Sindhri. Complainant Muhammed Ibrahim and others filed Writ Petition No 1326/2024 before this Court at its Circuit Court Mirpur Khas for protection and action in accordance with law. Learned Division Bench of this Court at Mirpur Khas vide order dated 21.10.2024 directed that the investigation of FIR No 47 of 2024 be transferred to FIA forthwith as the matter fell exclusively within the domain of the FIA for investigation in terms of *Torture and Custodial Death (Prevention and Punishment) Act, 2022. (Act, 2022)*

7. It transpired from record that upon transfer of the investigation, FIA Mirpurkhas registered separate FIR No. 21 of 2024 under Sections 364, 302, 120B, 201, 148, 149, PPC, 6 - 7 ATA and 8 and 9 of the Act, 2022 at FIA Police Station Mirpur Khas. It is pertinent to mention here that, complainant in FIR No 24/2024 registered at FIA and FIR No 47/2024 registered at PS Sindhri was the same person namely Muhammad Ibrahim. In the opening paragraph, of FIR No 24/2024 of PS FIA Mirpurkhas, it is stated that the aforesaid FIR was lodged on the directions of learned High Court; however, record did not support this stance that such directions for registration of another FIR for the same incident were ever issued. This Court only directed to transfer investigation in the FIR No 47/2024 to FIA.

8. The provisions of the Act, 2022, did not provide for registration of an FIR with FIA Police Station. The special legislation granted exclusive jurisdiction and powers of the investigation of offences relating to torture, inhuman, cruel, and degrading treatment to FIA under Section 5 of the Act, 2022, which reads as follows:-

“5. Investigation of offences.- (1) Notwithstanding anything contained in any other law for the time being in force, the Agency shall have the exclusive jurisdiction to investigate the complaints against any public officials have committed offence under this Act: Provided that the Agency shall investigate the complaints under the supervision of National Commission for Human Rights;

(2) If at any time, including during the grant of physical remand the Magistrate has reasonable grounds to believe that the offence under this Act is committed or a complaint of torture is lodged by the person in custody, he shall order a medical examination and if the results of such examination reveal infliction of torture, he shall notify the Agency to investigate such offence.

(3) The Agency, while investigating the offences under this Act, shall have the same powers and shall follow the same procedure as prescribed in the Federal Investigation Agency Act, 1974 (Act VIII of 1975) and the rules made thereunder.

9. Section 6 of the Act, 2022 provides that offences under the said Act are exclusively triable by the Courts of Sessions. Whereas Sections 8 and 9 provided for the same punishment as those of the provisions of Pakistan Penal Code for the same offence. Sections 6, 8 and 9 of the Act, 2022, read as under:-

“6. Trial of Offences:” (1) *Notwithstanding anything contained in any other law for the time being in force, the Court of Sessions shall have exclusive jurisdiction to try offences under this Act.*

(2) *No adjournment shall be granted during the Trial save for the interest of justice, provided if such an adjournment is granted it shall not be more than thirty days.*

“8. Punishment for torture:” *Any public official who commits or abets or conspires to commit torture shall be punished with the same punishment as prescribed for the type of harm provided in Chapter XVI of the Pakistan Penal Code.*

“9. Punishment for custodial death:” *Whoever commits or abets or conspires to commit the offence of custodial death, shall be punished with the same punishment as prescribed in section 302 of the Pakistan Penal Code.”*

10. From perusal of above provisions of law it is crystal clear that the ordinary Court of Sessions has the jurisdiction to try the offences under the Act, 2022. The law requires speedy investigation and trial in the cases under the Act, 2022. The investigation in the cases shall be completed within thirty days and trial shall complete within three weeks from the date of submission of challan as envisaged under Section 13 which reads as under:-

“13. Time limit for investigation, trial and appeal”

(1) *The investigation of the offences under this Act shall be completed within thirty days from the date of submission of the complaint.*

(2) If the investigation of an offence under this Act is not completed within thirty days, the Agency shall call for a report for explaining the delay in completion of the investigation and if satisfied with the causes of delay, may grant maximum five days for completion of the investigation or if the Agency is not satisfied with the causes of delay, may transfer the investigation to another investigating officer who shall take up and complete the investigation on the same stage where it was left by his predecessor.

(3) If investigation of an offence is not completed within thirty days, the Agency shall also file an interim report before the Court of Session and the court may decide to initiate the trial on the basis of such information.

(4) The trial of offences under this Act shall be completed within three weeks from the date of submission of challan before the relevant court.

(5) The appeal against the offences under this Act shall be decided within thirty days from the date of filing of such appeal."

11. The Act, 2022 did not articulate that FIA shall be deemed to be a police station for the purposes of registration of an FIR in cases of custodial torture and death. The Act, 2022 conferred exclusive jurisdiction upon FIA only to investigate the offences; however, FIRs in respect of such incidents shall be registered at local police stations. The FIA has been vested with jurisdiction to register FIRs only in the matters falling within the FIA Schedule under the Act of 1974 and Rules framed thereunder. It may be observed that the Act, 2022 has not been inserted in the Schedule under the Act of 1974 to infer that FIR in the offences shall be registered at FIA Police Station.

12. Contention of Learned DAG and Counsel for Complainant that FIR recorded at local police station in the instant case has been canceled under Rule 25.7 of Police Rules 1934 and there remained no other FIR for prosecution of accused involved in the custodial death of Shah Nawaz. Rule 25.7 of Police Rules, 1934 provides for transferring an FIR to another police station, when FIR of the incident was lodged at one police station but incident had occurred in the premises of another police station, in the said eventuality, Superintendent of Police shall cancel the FIR registered at First Police Station

and shall transmit the FIR to the police station within whose jurisdiction incident occurred. Rule 25.7 reads as under:

“25.7: Cancellation of a case in one police station and registration in another: When a case is transferred from one police station to another, the offence registered in the original police station shall be canceled by the Superintendent and a First Information Report shall be submitted from the police station in the jurisdiction of which the case occurred.”

13. Since in the instant case, recording of a second FIR at FIA Police Station was not tenable under the law, but it is a matter of fact that FIR already registered with the local police stood canceled, and report under section 173 CrPC has been submitted before Court concerned. The role of FIA under the Act, 2022 was limited to conduct investigation in the matter. FIR No 47/2024 registered at local police and FIR No 21/2024 registered at FIA police station contained the same set of allegations and are recorded by one and same person, therefore no serious prejudice would be caused to the accused and this being an error by FIA Police in understanding the law can be cured by invoking the provisions of section 537 CrPC. This mistake on the part of investigation agency will not affect the fate of trial. Had it been the case that report under section 173 CrPC in both FIRs would have been submitted then Petitioners could have sought quashment in subsequent FIR. The offence of Custodial Death is punishable under section 9 of the Act, 2022, which laid down that offence of the Custodial Death shall be punished with the same punishment as prescribed under section 302 of the Pakistan Penal Code.

14. Court takes cognizance of a criminal case on a police report under section 173 CrPC but not on the basis of information recorded in FIR. If during investigation it surfaced that proper section carrying the punishment of offence was not applied in FIR, then it was the prerogative of the Investigation Officer to insert the relevant penal provision of PPC in the charge sheet. The very purpose of an investigation of a criminal case is to sift the grain from chaff. Investigation takes its course on registration of FIR, wherein the investigating agency collects material to depict the true picture of the alleged incident. During the course of the investigation, if the Investigating Officer finds that the complainant or witnesses mentioned in the FIR were also involved in the commission of the offence, they may be arrayed as accused

and referred for trial before the concerned Court through a report under Section 173 Cr.P.C.

15. FIA was not declared as a police station under the Act, 2022 to record an FIR, therefore cannot record an FIR of the custodial death. FIR of the incident shall be recorded at a local police station. The legislation in its wisdom has entrusted the investigation of custodial deaths to FIA, to provide for a neutral avenue for investigation of the cases. The entrustment of investigation of cases pertaining to custodial torture and killings to FIA through special enactment was in consonance and equated the powers conferred to incharge of Police Station under section 156 of the Code of Criminal Procedure. In the present case though second FIR was not warranted by FIA, since the first FIR No 47/2024 has been canceled, therefore, the Petitioners accused will not be vexed twice and no case for double jeopardy is made out. Petitioners have failed to demonstrate that their fundamental rights as to fair trial were infringed in any manner. The Petitioners were facing accusation of a heinous crime of custodial killing, they cannot be benefited for trivial nature mistake of law by investigating agency.

16. Case laws relied upon by the parties with due reverence are distinguishable from the facts and circumstances of the present case.

17. For the foregoing reasons, this petition is dismissed. FIR No. 21 of 2024, registered at PS FIA, Mirpurkhas shall be construed to be an FIR recorded at local police station. Trial Court shall proceed with the matter and decide the fate of the case in accordance with law.

The Petition stands disposed of in the above terms.

J U D G E

J U D G E
HEAD OF CONST. BENCHES

Approved for reproting