

Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 2066 of 2025

[Ghulam Shabbir Dalwani v. Federation of Pakistan & others]

Before :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Riazat Ali Sahar

Petitioner : Through Syed Tariq Ahmed Shah, Advocate

Respondents 1&2: Through Mr. Sameeullah Rind, Advocate

Mr. Ghulam Abbas Sangi, Asst. Attorney General.
Mr. Muhammad Ismail Bhutto, Asst. Advocate General Sindh.

Date of Hearing
& Decision: 08.12.2025

J U D G M E N T

ADNAN-UL-KARIM MEMON, J.- Through this Constitutional Petition, the petitioner has prayed for the following relief(s):-

- a) Quash the above FIR No. 26 of 2025 PS FIA Composite Circle Shaheed Benazirabad under Section 8/9 of the Torture and Custodial Death (Prevention & Punishment) Act, 2022, read with Section 302, 34, 109 & 342 PPC, same has been registered in violation of law having no legal force.
- b) Pass an ad-interim order, thereby FIA and I.O of the FIR/case may be directed to conduct the inquiry first and collect the material in compliance with the FIA (Inquiries & Investigation) Rules 2002, and based on whether the offences are being made out prima facie, seek permission from the competent authority.

2. The case of the parties as per pleadings are that complainant in FIR No. 26 of 2025, Jam Hyder Zaman and Jam Sibtain Sultan, alleged before the Deputy Director FIA Composite Circle, Shaheed Benazirabad, that on 10.11.2025 at about 5:00 p.m., their brother, Jam Aziz Jakhro, was forcibly taken from their home by police officials namely (1) Gul Muhammad alias Gulu Zardari, (2) Noor Ali Lakho, and (3) Muharram Ali Zardari. They claim to have followed the police to Police Station Shahdadpur, where they purportedly saw petitioner/SHO Ghulam Shabeer Dalwani and other officials brutally assaulting the deceased and administering electric shocks. They further alleged that at about 10:20 p.m., they were informed that their brother had died in police custody. On their application, FIA registered FIR No. 26 of 2025

under Sections 8 & 9 of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, read with Sections 302, 34, 109, and 342 PPC. Meanwhile, FIA officials allegedly began raiding to arrest the petitioner, compelling him to obtain protective bail from this Court in Cr. B.A. No. 3152/2025 vide order dated 13-11-2025. It is urged that prior to this, FIR No. 386/2025 had been registered at PS Sanghar on 10-11-2025 by a private complainant under Sections 386, 387, 34 PPC r/w Section 7 ATA. In that FIR, the arrest of deceased Jam Aziz Hassan Jakhro was allegedly shown on 10-11-2025 by the petitioner and two PCs. Subsequently, Inspector Wali Muhammad Bhambhro reported the custodial death to learned Judicial Magistrate-II Shahdadpur on 11-11-2025, stating health complications. The inquest proceedings, however, were conducted by police officials themselves, as reflected in the Danishtnama and Lash Chakas forms. The body was then brought to SIMS Hospital at 10:25 p.m. on 10-11-2025, and a post-mortem was conducted between 02:00 a.m. and 04:00 a.m. on 11-11-2025. The learned Judicial Magistrate then directed the Director FIA Hyderabad to proceed in accordance with law; however, it is alleged that FIA registered the impugned FIR without following the mandatory procedure.

3. Learned counsel for the petitioner submitted that the impugned FIR has been illegally lodged by the FIA without adhering to the mandatory legal procedure; that the FIR does not even mention the date of the alleged incident in the prescribed column, although the narrative refers to 10.11.2025; that Inspector Wali Muhammad, the Investigating Officer of FIR No. 26/2025, himself reported that the deceased had suffered health complications while being taken to SIMS Hospital and that there was no allegation of torture or violence in his application, thus taking the matter outside the ambit of the Torture and Custodial Death (Prevention & Punishment) Act, 2022; that under the 2022 Act, proceedings are to be initiated through a complaint and not by registration of an FIR; hence, the impugned FIR is patently illegal. Moreover, Section 5(3) of the Act requires FIA to follow the procedure prescribed under the FIA Act, 1974, and the FIA (Inquiries & Investigation) Rules, 2002. These rules mandate a prior inquiry and permission before registration of any case. Although permission was formally obtained, it was sought without conducting the required inquiry or investigation, rendering the proceedings void and contrary to law; that despite inclusion of Section 302 PPC, no final post-mortem report is available, and the provisional report indicates no fatal injury, only minor contusions without determination of their duration. The inquest report (Danishtnama and Lash Chakas) describes black-colored injuries indicative of old wounds, contradicting the alleged date of occurrence. The allegation of electric shocks is also unsupported by the post-mortem findings; that FIR No. 386/2025 clearly reflects that the petitioner was not the Investigating Officer, but Inspector Wali Muhammad was the I.O. Thus, the allegation that the petitioner arrested the deceased is contrary to the record. The memo of arrest

purportedly bearing the petitioner's signature, is false, fabricated, and appears to have been manipulated to implicate him *mala fide*. Even the complainant of the present FIR does not attribute the arrest of the deceased to the petitioner, which further exposes the falsity of the said memo. Learned counsel submitted that had the FIA complied with the mandatory requirements of the FIA Rules, 2002, and conducted the necessary inquiry, the facts would have surfaced, and the petitioner would not have been wrongfully implicated in the present crime. The FIA also disregarded the categorical directions of the Judicial Magistrate dated 11.11.2025 to conduct an inquiry before proceeding further. Lodging the impugned FIR in violation of such directions amounts to gross abuse of process and is liable to be set aside. Learned counsel lastly prayed for the instant petition to be allowed.

4. Learned counsel for respondents 2 & 3 opposed the petition and submitted that Act 2022 protects a person during custody from all acts of torture perpetrated by public officials; that the offence under this section is cognizable, non-compoundable and non-bailable as defined in the Code of Criminal Procedure; that the offence of custodial death is liable to the same punishment prescribed under Section 302 of the Pakistan Penal Code; as such, the question of its non-cognizance without permission is irrelevant and misconceived as portrayed by the petitioner. He prayed to dismiss the petition.

5. We have heard learned counsel for the parties and perused the record with their assistance.

6. It appears from the record that one Hasnain reported that on 10.11.2025, Jam Aziz Hassan (now deceased) was taken into custody by the concerned police officials, during which they claimed to have suffered pain, and was subsequently presented at SIMS Hospital, where he was found dead. In such circumstances, an application had been submitted for examination of the deceased's body, including post-mortem procedures. Upon receiving the application, learned Magistrate, along with his staff, visited SIMS Hospital and met with Dr. Mumtaz Zardari, Dr. Irfan Garwan, and Director Dr. Bashir Ahmed Jamali, to inquire about the post-mortem of deceased Jam Aziz Hassan. The doctors informed that the post-mortem was conducted with the consent of the deceased's brother, after which the body was handed over to the family. The doctors further informed the Magistrate that the body bore visible signs of torture. After returning to his office, the learned Magistrate heard submissions of State Counsel and the Investigating Officer. During the course of arguments, learned State Counsel pointed out that since the death occurred during police custody, the matter fell within the jurisdiction of FIA under Section 5 of the Torture and Custodial Death (Prevention and Punishment) Act, 2022. Learned Magistrate referred to Section 5 of the Act, which provided that the Agency has exclusive jurisdiction to investigate

complaints against public officials who commit offences under the Act, under the supervision of the National Commission for Human Rights. Furthermore, if there is a reasonable belief that an offence under the Act has been committed, or if a complaint of torture is made by a person in custody, a medical examination shall be ordered. If such an examination reveals infliction of torture, the Agency is required to investigate the offence. However, the Agency, while investigating offences under the Act, shall exercise the same powers and follow the same procedure as prescribed in the Federal Investigation Agency Act, 1974, and the rules made thereunder. After examining the application in light of these provisions, the learned Magistrate found that the death of the deceased Jam Aziz Hassan had indeed occurred during police custody. He also reviewed the “Lash Chakas Form” prepared by the hospital police, which corroborated that the death was caused due to torture. Accordingly, the matter was referred to the Director, FIA Hyderabad, for further proceedings in accordance with the law, and the case is under investigation.

7. Before going ahead, it is expedient to have a look at the provisions of the Act 2022. Act 2022 protects a person during custody from all acts of torture perpetrated by public officials. Section 5 of the Torture and Custodial Death (Prevention & Punishment) Act, 2022, outlines the procedure for investigating offences under the Act. It provides that, notwithstanding anything contained in any other law, the Federal Investigation Agency has exclusive authority to investigate complaints made against public officials accused of committing offences under this law. Importantly, the statute requires that all such investigations must be conducted under the supervision of the National Commission for Human Rights, ensuring transparency and oversight. The law further states that if, at any stage, even during the grant of physical remand, a Magistrate has reasonable grounds to believe that torture has been inflicted, or if a detainee complains of torture, the Magistrate must order a medical examination. If the medical report shows signs of torture, the Magistrate is then obligated to formally notify the FIA and direct it to investigate the matter. Additionally, Section 5 mandates that while conducting investigations under this Act, the FIA must exercise the same powers and follow the same procedural framework laid down in the Federal Investigation Agency Act, 1974, as well as the rules framed thereunder. This ensures that any investigation is carried out strictly in accordance with established legal standards and procedural safeguards. Section 8 of the Act sets out the punishment for torture. It provides that any public official who commits, assists in, or conspires to commit torture will be punished in accordance with the penalties prescribed for the corresponding type of harm under Chapter XVI of the Pakistan Penal Code. The law further clarifies that an offence under this section is cognizable, non-compoundable, and non-bailable as defined in the Code of Criminal Procedure. Section 9 addresses the offence of custodial death. It states that any person who commits, abets, or

conspires to cause the custodial death of another shall be liable to the same punishment prescribed under Section 302 of the Pakistan Penal Code. The accompanying explanation specifies that this offence is cognizable, compoundable, and non-bailable under the Code. Additionally, the provisions of this Act will apply to such proceedings to the extent relevant.

8. Prima facie, the above provision directly applies to the present case, where Jam Aziz Hassan allegedly died while in police custody and post-mortem findings indicate signs of torture. The rules framed under the Act provide a detailed procedural framework for FIA investigations, including exclusive authority to register inquiries or FIRs against public officials; Conduct of investigations under the supervision of the National Commission for Human Rights; and Strict procedural safeguards to ensure fair, discreet, and professional conduct, avoiding undue publicity or prejudice to any public servant. The statutory scheme makes it clear that the FIA not only may, but is obliged to, investigate cases of custodial torture or death. It is well established that such cases fall exclusively within the FIA's jurisdiction, and FIRs registered by local police in these matters are not competent. Judicial practice also recognizes that when post-mortem or medical examination confirms torture or custodial injuries, the FIA must act as the competent authority to investigate.

9. In the instant matter, deceased Jam Aziz Hassan was in police custody at the relevant time; prima facie, the allegations of torture, confirmed by post-mortem findings and medical examination, exist, subject to contrary evidence being proved in the trial. The complaint was lodged by the deceased's family, and the Magistrate had reasonable grounds to believe that an offence under the 2022 Act occurred and referred the matter to FIA. The above factual position of the case prima facie fulfills all statutory triggers under Section 5(2) and the procedural rules, rendering FIA competent and obligated to lodge an FIR and conduct a thorough investigation.

10. So far as the contention that FIA lacked authority to register the FIR is concerned, since the cognizable offence is incorporated into 154 Cr.PC book as such, the objections raised by the petitioner carry no legal substance at this preliminary stage. Although Section 5 of the Torture and Custodial Death (Prevention & Punishment) Act, 2022 refers to "complaints," the Act nowhere prohibits registration of an FIR, nor does it mandate that proceedings must commence only through a complaint. Primarily, under Section 154 Cr.P.C., once information discloses a cognizable offence, such as torture or custodial death, the FIA is bound to register an FIR. Thus, the word "complaint" merely identifies the source of information and cannot be read as a bar. It is settled law that where a cognizable offence is disclosed, any omission of preliminary inquiry is at most a procedural irregularity, not a ground to quash the FIR. The inquiry requirements in the FIA Rules, 2002, primarily relate to

non-cognizable or technical offences. In grave matters like custodial torture or death, immediate registration of an FIR is justified to prevent loss or tampering of evidence. Section 5(2) applies only when a Magistrate himself detects torture during remand, which is not the case here, as the Complainant(s) directly approached the FIA. Likewise, NCHR supervision is meant for the investigation and not a precondition for FIR. The Magistrate's order for inquiry concerned post-mortem and inquest matters and does not restrict FIA's independent authority to register a cognizable offence. Even assuming any procedural lapse occurred, it is curable and cannot invalidate the FIR at this initial stage. The FIR discloses clear cognizable offences; Section 5 does not bar registration of FIR.; NCHR's role is supervisory during investigation, and the Magistrate's order does not override FIA's statutory mandate. Section 156(1) of the Code of Criminal Procedure governs the powers of police and, by extension, the FIA when exercising police powers to investigate cognizable offences. It underscores the principle that investigation is primarily the domain of the investigating agency, and courts should not normally interfere at the initial stage. This subsection empowers the police to investigate any cognizable offence without prior permission or an order from a Magistrate. As soon as information, oral or written, discloses a cognizable offence, the police/FIA is legally obliged to register an FIR under Section 154 Cr.P.C. and may immediately commence an investigation under Section 156. This provision establishes that the registration of an FIR does not require preliminary inquiry, formal complaint, or Magistrate approval once a cognizable offence is made out. Further, Section 156(2) provides that no action taken by the police in such a case can be questioned on the ground that the officer lacked authority to investigate the offence. It is well-established principle that when the language of a statute is unambiguous, it requires no further interpretation. The legislature's intent, expressed through the plain wording of law, must be given full effect. The words used should be understood in their natural and ordinary meaning, and the focus must remain on what the legislature has expressly stated, not on what it has omitted. Accordingly, the petitioner's objections on the jurisdiction of FIA are premature and devoid of merit, at this stage, hence discarded.

11. Before proceeding further, it is necessary to clarify the legal interface between the Torture and Custodial Death (Prevention and Punishment) Act, 2022 ("the 2022 Act"), the Federal Investigation Agency Act, 1974 ("the FIA Act"), and the Federal Investigation Agency (Inquiries & Investigation) Rules, 2002 ("the 2002 Rules"). Repeated controversies have arisen before this Court on the question whether the 2022 Act mandates a preliminary inquiry before registration of an FIR, or whether an enquiry is excluded altogether. Since the determination of this issue bears directly upon the objections raised by the petitioner, it is appropriate to address it in some detail.

12. Section 5 of the 2022 Act confers exclusive jurisdiction upon the FIA to *investigate* complaints relating to torture, custodial death, or custodial rape committed by public officials. Sub-section (3) expressly stipulates that, while investigating such offences, the Agency “shall have the same powers and shall follow the same procedure” as prescribed in the FIA Act, 1974, and the rules framed thereunder. This legislative technique known as *incorporation by reference* imports into the 2022 Act the entire procedural structure governing enquiries, investigations, and internal scrutiny under the FIA Act and the 2002 Rules. As is well recognised, that framework maintains a long-standing distinction between an “enquiry” (screening/verification) and an “investigation” (collection of evidence for trial), and vests in the Agency the discretion to open, convert, or close enquiries where circumstances so require.

13. The 2022 Act itself neither creates a compulsory preliminary enquiry stage nor prohibits one. The Act is *lex specialis* in respect of subject-matter and forum, but it is not intended to be a self-contained procedural code. Once Section 5(3) incorporates the FIA Act and the 2002 Rules, the Agency’s pre-existing power to conduct a preliminary enquiry travels with full force into the 2022 Act, operating to the extent that it does not defeat the Act’s object namely, effective and credible investigation of custodial violence. To construe Section 5 as excluding the possibility of a preliminary enquiry would render sub-section (3) otiose, disturb the procedural harmony of the statute, and disregard the interpretive obligation of giving effect to all parts of a law.

14. At the same time, the converse proposition is equally incorrect. Nothing in the 2022 Act makes a preliminary enquiry a condition precedent to the registration of an FIR where the information available *ex facie* discloses a cognisable offence under Sections 8 or 9. In cases involving allegations of custodial torture or death, the omission to open a formal enquiry file under the 2002 Rules may at best amount to a curable procedural irregularity; it cannot be elevated to a jurisdictional defect so as to nullify an FIR or stultify an ongoing investigation. The law leans in favour of prompt documentation, preservation of evidence, and timely commencement of investigation in matters of alleged custodial violence, rather than enabling technical defences to defeat accountability at the inception.

15. Properly harmonised, the legal position stands thus: (i) the 2022 Act, being special in subject-matter, prevails over inconsistent general law but does not displace the procedural framework of the FIA Act and the 2002 Rules; (ii) the FIA remains empowered, though not bound, to commence with a preliminary enquiry to assess credibility of allegations; (iii) where sufficient material is already available indicating a cognisable offence, the Agency is equally obliged to proceed directly to registration of an FIR under Section 154 Cr.P.C. without awaiting any enquiry; and

(iv) neither statute may be interpreted in a manner which defeats the other or undermines the overarching objective of ensuring accountability for torture and custodial deaths. In short, the special law supplies jurisdiction; the parent statute supplies procedural tools; both must be read conjunctively.

16. Although not applicable *ratione temporis* to the present incident, it may be noted that the Federal Government has subsequently framed the Torture and Custodial Death (Prevention and Punishment) Rules, 2025 (S.R.O. 2180(I)/2025), which contemplate a structured mechanism including a multidisciplinary scrutiny unit and expressly envisage the use of preliminary enquiries in appropriate cases. These Rules reinforce, rather than negate, the legislative understanding that an enquiry may sometimes be necessary, provided it does not become a pretext for inertia in cases involving unnatural or suspicious custodial deaths. When applied to the present case, the material before the Agency was sufficient to disclose cognizable offences; therefore, the registration of FIR No. 26 of 2025 by the FIA lies fully within the statutory framework discussed above.

17. Regarding custodial deaths, we are guided by the Supreme Court's decision in **PLD 2011 SC 799** (*Suo Motu Case No.10 of 2011, Brutal Killing of a Young Man by Rangers*). The Supreme Court took suo motu notice of a viral video showing Sindh Rangers officials killing an unarmed man Sarfraz Ahmed, and concealing the crime through misleading FIRs. The Supreme Court held this as barbarism and violation of Article 9 (right to life) of the Constitution. Senior officials were transferred, and an impartial investigation under the Anti-Terrorism Act, 1997 was ordered, with a trial to be completed within 30 days. The Supreme Court emphasized that no one is above the law, accountability is essential and law enforcement must protect life.

18. This Court is the guardian of citizens' rights, will not tolerate custodial deaths or inaction on the part of SSPs, DSPs, SHOs and other police officials of the concerned area who are personally responsible for subordinate misconduct if such an incident occurs. The I.G. Police Sindh must ensure that all police officials conduct themselves lawfully without fail. A departmental inquiry must be undertaken against all delinquent officials, duly supervised by the Chief Secretary Sindh, with a DIGP of good repute nominated by him. However, Torture in Police custody is strictly prohibited.

19. In the present case, the FIA has exclusive jurisdiction over custodial torture and deaths involving public officials; registration of FIR and investigation by the FIA are lawful, while local police cannot investigate such matters. The impugned FIR and FIA investigation are held valid. The Petitioner shall appear before the I.O of FIA for

investigation. In case of failure the Complainant shall be free to move application for cancellation of his bail.

20. The Supreme Court in the recent case held that under Article 4 of the Constitution of Pakistan, every citizen has an inalienable right to protection of law, and no action harmful to life, liberty, body, reputation, or property can be taken except in accordance with law. Articles 10 & 14 further safeguard the rights of arrested persons, require production before a Magistrate within 24 hours, and prohibit torture while declaring human dignity inviolable. Although certain rights may be regulated by law, any deprivation of liberty or dignity must follow due process. Article 10-A of the Constitution guarantees fair trial and due process, ensuring that laws are applied strictly and fairly.

21. Torture or cruel, inhumane or degrading treatment is absolutely prohibited and cannot be justified in any circumstance. Such practices sometimes result in extrajudicial killings, highlighting the need for strong external oversight of law-enforcement agencies.

22. Since the right to life is a supreme human right recognized globally and in major human rights treaties, the State is duty-bound to prevent custodial violence. Pakistan, as a signatory to the Universal Declaration of Human Rights and UN Resolution 43/173 (1988), is obligated to uphold international human rights standards, including absolute prohibition of torture and illegal detention.

23. The police being custodians of law, must protect the life, liberty and dignity of citizens. Any arrest or detention without due process or any form of torture or inhumane treatment, not only violates constitutional rights but also constitutes a criminal act and serious misconduct.

24. In light of the allegations of custodial torture and increasing incidents of torture and deaths in custody, the Supreme Court's guidelines underscore the necessity for strict accountability and effective preventive measures. Police officers must adhere to established guidelines during arrests and detentions to ensure transparency and protection of human rights. In such circumstances, IGP Sindh is required to consider the following key guidelines as he deems fit and appropriate.

1. Arresting and investigating officers must wear badges and carry ID cards with their name and designation. Their details must be recorded in a register.
2. A memo must be prepared at the time of arrest stating the date and time, and attestation by a family member or respectable local witness, with the arrestee's countersignature.

3. The arrest must be communicated to a friend or relative immediately. If they are outside the district, they must be informed within 8 to 12 hours through the legal aid authorities.
4. The arrestee must be informed of their right to communicate about their arrest and detention.
5. A diary at the detention place must record details of arrest, officials involved, and persons informed.
6. The arrestee may meet their lawyer during interrogation, though the lawyer cannot be present throughout.
7. On arrest, the arrestee's physical condition and injuries must be recorded and attested. A medical check-up must be done every 48 hours by an approved doctor.
8. Copies of all related documents must be sent to the Magistrate, who shall supervise the detention of the suspect under the judicial orders as provided under the law.
9. Within 12 hours, all details of arrest and custody must be displayed at the district PCR.

25. Failure to follow the above guidelines will lead to departmental action and contempt of court proceedings. These measures safeguard detainees' rights and ensure humane treatment in custody. The power to punish must remain with the judiciary, not the investigating authorities, thereby upholding the rule of law and preventing custodial deaths.

26. In such circumstances of the case, all torture cells in all police stations under the garb of investigating be closed forthwith and the police officials be brought to justice forthwith, with proper SOP guidelines as discussed supra. The IGP Sindh shall issue orders for its immediate compliance.

27. In view of the above facts and circumstances of the case, this petition is dismissed, directing the FIA to complete the investigation and report to the trial court. The Sindh Chief Secretary and Sindh Police Chief must take departmental action against all officials of Police Station Sanghar, including DSP, SHO, and I.O. of FIR No. 386/2025, who shall not be allowed to perform operational duties during the departmental inquiry.

A copy of this judgment shall be sent to Chief Secretary, Sindh and the IGP Sindh through all available means including electronic communication and WhatsApp, for compliance within two months without fail.

JUDGE

JUDGE