

ORDER SHEET  
HIGH COURT OF SINDH-CIRCUIT COURT, HYDERABAD

C.P. No.D-1434 of 2024

(Mazhar Ali Naich & others Vs. Province of Sindh)

*Before:-*

*Mr. Justice Amjad Ali Sahito.*

*Mr. Justice Khadim Hussain Soomro*

Date of hearing & Order:

16.10.2024

Mr. Altaf Sachal Awan advocate for the petitioners.  
Mr. Allah Bachayo Soomro, Additional Advocate General.  
Mr. Nazar Muhammad Memon, Addl. P.G.  
Mr. Zubair Akber Yousfani, AD, FIA, Hyderabad along with  
Zahir Ahmed, ASI, FIA CC, Hyderabad.

ORDER

*Khadim Hussain Soomro, J.*- Through this instant petition, the petitioners have impugned the order dated 20.09.2024 passed by learned Additional Sessions Judge-II, Jamshoro at Kotri, whereby the learned trial court issued directions to FIA Crime Circle Hyderabad to conduct the investigation in Crime No.106 of 2024 under sections 302, 342, 147, 148 and 149, PFC, registered at PS Sehwan.

2. Brief facts of the case are that Mst. Sakina, the mother of 23-year-old deceased Khalil, lodged an FIR on 25-08-2024. She stated that on that day, her other son Imtiaz informed her that the accused/petitioners along with others, took Khalil to the Police Station in a police vehicle. At the station, she found her son being tortured by the accused/petitioners and confined in a room. She made the request of his release, she was ignored. Later, when she returned to the station, Khalil was missing, and WHC Amanullah allegedly demanded Rs. 60,000 as an illegal gratification and threatened that

she would receive her son's dead body if the payment wasn't made. On 27.07.2024, she found Khalil's dead body at a hospital. Her request for a post-mortem letter was denied, prompting her to protest with her relatives. After a month, her FIR was registered.

3. The petitioners filed Criminal Bail Application No.S-892/2024 before Additional Sessions Judge-II Jamshoro at Kotri seeking pre-arrest bail, which has been dismissed vide impugned order dated 20.09.2024 with direction to the SSP Jamshoro to handover the investigation of this case to the Federal Investigation Agency (FIA) Crime Circle, Hyderabad within 05-days.

4. Learned counsel for the petitioners submits that the portion of the impugned order directing the SSP Jamshoro to transfer the investigation to the FIA Crime Circle Hyderabad is illegal, void, null, and beyond the jurisdiction of the learned Additional Sessions Judge-II, Jamshoro @ Kotri; that it is not sustainable under the law; that learned Additional Sessions Judge-II, Jamshoro @ Kotri had no jurisdiction to transfer the investigation during the hearing of a bail application, which exceeds his lawful authority; that learned Additional Sessions Judge-II, Jamshoro @ Kotri acknowledged in the impugned order that a formal complaint is mandatory in cases of torture. However, the complainant in this case lodged an FIR, which falls solely under the jurisdiction of the Provincial police and cannot be investigated by the FIA. The impugned order is liable to be set aside.

5. On the other hand, learned AAG, alongwith FIA officials, supports the impugned order by submitting that the allegations of torture and custodial death are raised against public officials/petitioners, only the Federal Investigation Agency (FIA) is empowered to conduct the investigation of this case.

6. We have heard learned counsel for the petitioners, learned Addl. A. G, Addl. P.G and perused the record.



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7. As per the contents of the FIR, the complainant stated that she found her son being tortured by the petitioners at the police station, where he was confined in a room and due to police torture, he had passed away. Incidents of torture and deaths in custody are egregious violations of basic human rights. The Torture and Custodial Death (Prevention and Punishment) Act 2022 (The Act 2022). The Act was promulgated on 03-11-2022, which provides protection to persons during custody from all acts of torture perpetrated by public officials and ensures accountability of law enforcement agencies by introducing legal consequences for acts of torture and custodial death. The Act 2022 seeks to create a robust framework that not only addresses the immediate issues of torture and custodial deaths but also aligns with broader international human rights norms, ensuring that the dignity and rights of individuals in custody are respected and protected.

8. The complainant lady claimed that her son was killed in custody. Section 2 (f) of the Act 2022 provides the definition of custody. The term 'custody' encompasses all circumstances in which an individual is detained or deprived of his liberty by any person, including a public official or someone acting in an official capacity. This definition applies regardless of the legality, nature, or location of the detention. The definition of 'custody' extends to judicial custody and encompasses all forms of temporary and permanent restrictions on a person's movement, whether imposed by law, force, or other methods. When it comes to investigating particular claims of custodial torture, killings, or rapes, involving public officials, the FIA has exclusive jurisdiction under the Act of 2022. A specialized, impartial, and autonomous body ensures that investigations are conducted objectively and comprehensively, with a full understanding of the complexities involved. Centralizing expertise and decision-making authority within such a specialized body promotes accuracy and impartiality in handling such sensitive matters.

9. Section 13 of the Act of 2022 demands that incidents of custodial torture, killings, or rapes be handled promptly, with

investigative personnel held accountable. The statute emphasizes the need for efficiency in legal procedures, requiring investigations to be completed within thirty days to avoid unnecessary delays that may impede justice. Victims and the accused should not be left in prolonged uncertainty. Any delays must be reported, ensuring that investigating officers remain diligent. A system of judicial oversight is established, with interim reports required to be submitted to the Court of Sessions if investigations are delayed. The Act's goal is to streamline the criminal justice system, ensuring accountability and swift resolution of cases without compromising the standards of justice.

10. All public officials are obligated to discharge their duties in a lawful manner, as enshrined in Article 5(2) and reinforced by Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The legal framework passed by Parliament reflects the will of the people, and due process must be followed without exception. State officials must uphold the laws passed by Parliament, ensuring the rule of law and preventing the collapse of judicial authority. The failure of public officials to adhere to laws would lead to anarchy and weaken the judiciary's authority. As part of its constitutional authority under Article 199, the court cannot ignore cases where public officials have neglected or violated the rights of individuals. The cases of *Abdul Majeed Zafar v. Secretary, Government of Punjab and others (2007 SCMR 1769)* and *Muhammad Yasin v. Government of Pakistan (2011 SCMR-1)* highlight the importance of public officials' adherence to the law.

11. We are aware that the complainant, rather than submitting a complaint under Section 2(c) of the Act 2022, had registered an FIR under Section 154 Cr.P.C. Failing to follow procedural law can not deprive individuals to be dealt with in accordance with law. Due process and uniform application of these laws are so required. Government officials cannot just sit on their hands and refuse to enforce laws that have been lawfully approved by Parliament. The executive branch must fulfill its responsibility to carry out the laws

passed by the legislature. The correct implementation of these laws is the responsibility of all State officials, including those working for various government bodies. Ensuring the rule of law and the efficacy of the legal system relies on this responsibility, which goes beyond simple procedure. Adherence to passed legislation is of the utmost importance, as it guarantees that the State's administration upholds the democratic ideals and directives provided by its representatives in office. Legislation passed by Parliament must be executed by state officials or else the country would descend into anarchy. As it exercises its constitutional authority under Article 199, this court cannot turn a blind eye to cases where basic rights have been violated because public officials were negligent, indifferent, or careless in carrying out their duties. A guiding concept that government officials should follow the law, as stated supra, and the Public officials must adhere to the letter of the law at all times; breaking the law is an act of willful disobedience, according to this principle. Courts must zealously and meticulously defend the rights guaranteed by Articles 4, 9, 10, 10-A, and 14 of the Constitution 1973 Islamic Republic of Pakistan.

12. In view of the above, we find no illegality or infirmity in the impugned order passed by learned Additional Sessions Judge-II, Jamshoro @ Kotri. Accordingly, this petition is dismissed along with the pending application. /

Compared by **NADEEM.**

Prepared by **SHAKEEL.**

Sd/- **KHADIM HUSSAIN SOOMRO.**  
JUDGE. 16.10.2024.

Sd/- **AMJAD ALI SAHITO.**  
JUDGE.