IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S- 617 of 2025

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Cr. Bail Appln. No. S- 515 of 2025

Applicants	:	1) Mushtaque Ahmed s/o Muhammad Sadique 2) Afshad Ahmed s/o Muhammad Sadique Both by caste Sahto *Through* M/s Safdar Ali Kanasirao & Syed Naimat Ali Shah, Advocates
The State	:	*Through* Mr. Mansoor Ahmed Shaikh, DPG
Date of hearing	:	15.12.2025
Date of decision	:	15.12.2025

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O R D E R

KHALID HUSSAIN SHAHANI, J. – Through Criminal Miscellaneous Application No. S-617 of 2025, the applicants, namely Mushtaque Ahmed and Afshad Ali, have invoked the inherent jurisdiction of this Court under section 561-A, Cr.P.C., challenging the order dated 29.09.2025 passed by the learned Civil Judge & Judicial Magistrate-I, Thari Mirwah. By the said order, the learned Magistrate took cognizance on a report submitted under section 173, Cr.P.C. in Crime No.52/2025 of Police Station Setharja and declined to accept the opinion of the Investigating Officer for disposal of the case in "C" class. Criminal Bail Application No. S-515 of 2025 arises out of the same FIR, therefore, both matters are being decided by this common order.

2. Briefly, the facts, as articulated in FIR No. 52/2025 registered at Police Station Setharja for offences under sections 302, 201 and 34, PPC, are that the complainant, Noman Khan, stated that he has five brothers and that they jointly cultivate agricultural land belonging to one Ghulam Ali Sahito, which is situated adjacent to a graveyard. On 16.05.2025, from 11:00 hours and continuing up to 17.05.2025 till about 7:00 a.m., it was their turn in the rotational water schedule for irrigation.

3. During this period, according to the complainant, the present applicants, Mushtaque and Afshad, along with their co-accused Muhammad

Ali, allegedly came to the field and asked the complainant's brother, Pervez Ali, to accompany them for the purpose of diverting and flowing water from Kobri Minor. It is alleged that at about 11:00 hours, the accused persons took Pervez Ali with them. Thereafter, Pervez did not return.

4. The complainant claims that he narrated this episode to his other brothers and to the respectable persons of the village and also made efforts to contact and locate the accused persons; however, they were allegedly not available in the village. The complainant and his relatives continued searching for both the missing brother and the accused persons, but for two days neither could be traced.

5. On 18.05.2025, at about 2:30 p.m., the complainant allegedly received information that the dead body of his brother Pervez was lying in a watercourse on the land of Ghulam Ali. The complainant, accompanied by his cousin and other villagers, reached the spot and found the dead body of Pervez lying in a prone position in the watercourse, encircled with an electric cable, in a decayed state and emitting foul smell. According to the complainant, the skin on the nape and neck region appeared burnt and footprints of about six persons were seen in the vicinity. The police were informed; legal formalities were completed at the spot and the dead body was shifted to RHC Thari Mirwah where postmortem examination was conducted. After autopsy, the body was handed over to the complainant for burial. It was thereafter that the complainant lodged the FIR.

6. Learned counsel for the applicants, while assailing the impugned order, has contended that the entire substratum of the prosecution case has collapsed in view of both the medical evidence and the subsequent conduct of the complainant and the prosecution witnesses. He submits that the medico-legal officer, on the basis of histopathological, chemical and radiological reports, clearly opined that no positive findings were detected to establish the cause of death; consequently, the autopsy was concluded as

"negative". Learned counsel emphasized that in such circumstances the Investigating Officer was specifically left at liberty to collect any other material, if available, to ascertain the cause of death and to ensure fair investigation. However, despite this liberty, no incriminating material could be procured against the applicants. Learned counsel further argued that during the course of investigation, the statements of alleged eye-witnesses, namely Passand Ali and Ali Zaman, were recorded, and though they initially appeared to support the complainant's version as narrated in the FIR, both of them have now categorically retracted from their earlier stance. He drew attention to the affidavits sworn by these witnesses before this Court, wherein they have exonerated the applicants and co-accused from any participation in the alleged offence and have specifically stated that they do not support the allegations levelled in the FIR. It is further argued that even the complainant has filed an affidavit of no-objection in categorical terms, stating that he does not wish to proceed against the applicants and that the FIR and all subsequent proceedings may be quashed. Thus, according to learned counsel, the only possible ocular account that could have linked the applicants to the alleged offence stands completely effaced from the record. Learned counsel submitted that the Investigating Officer, keeping in view the negative autopsy report, the absence of any corroborative forensic or circumstantial evidence and the retraction by material witnesses, opined that the case be disposed of in "C" class as being one in which the commission of any cognizable offence by the applicants could not be substantiated. The Magistrate, however, declined to accept this opinion and proceeded to take cognizance, which, according to learned counsel, is a jurisdictional error and amounts to mechanical exercise of authority without any admissible material on record. Learned counsel stressed that although the opinion of the Investigating Officer is not binding on the Magistrate, yet the Magistrate is required to apply judicial mind to the entire material and to see whether there is at least some prima facie evidence to justify taking cognizance.

In the present case, he contends, when the medical evidence is wholly neutral, the cause of death is unascertained, and all material witnesses, including the complainant, have withdrawn their allegations and exonerated the applicants, there remains no legally sustainable basis for the continuation of criminal proceedings. On these premises, learned counsel argued that the impugned order is not only against the record but is also a misuse of the process of law. He thus prayed that the impugned order dated 29.09.2025 be set aside, the summary under "C" class submitted by the Investigating Officer be approved, and FIR No. 52/2025 along with all consequential proceedings be quashed. It was further submitted that once the FIR is quashed, the connected bail application would become infructuous.

07. Conversely, learned Deputy Prosecutor General, while appearing for the State, stated that as per the initial prosecution theory there was last-seen evidence against the applicants and co-accused Muhammad Ali, as they were allegedly the last persons seen in the company of the deceased Pervez. He, however, fairly conceded that the medical evidence does not support the allegation of homicidal death in any conclusive manner, as the autopsy report is negative and the cause of death remains unascertained. Learned DPG further confirmed that the complainant Noman Khan as well as witnesses named in the FIR have filed affidavits before this Court, stating that they have no objection if the FIR and all subsequent proceedings arising therefrom are quashed. He added that in view of such affidavits and the absence of supportive medical or forensic evidence, the continuation of proceedings may not serve any useful purpose. He, therefore, reluctantly left the matter to the discretion of the Court.

08. I have heard learned counsel for the applicants and learned DPG for the State and have minutely examined the material available on record, including the impugned order, the police papers, the medical record and the affidavits filed by the complainant and the witnesses. It is an admitted position that the names of the applicants, along with co-accused Muhammad Ali, are

mentioned in the FIR with the specific allegation that they had taken the deceased Pervez with them for releasing water from Kobri Minor, and that subsequently Pervez's dead body was recovered from the watercourse. At the stage of lodging the FIR, therefore, the allegation against the applicants was essentially that of last-seen together, forming the initial basis of suspicion. However, a bare perusal of the autopsy report, as highlighted by learned counsel, prima facie reveals that the medico-legal officer, after receipt of histopathological, chemical and radiological reports, recorded the clear opinion that no positive finding had been obtained to indicate the cause of death and that the autopsy was concluded as "negative". Therefore, from a strictly medical standpoint, the prosecution has failed to establish whether the death of Pervez was homicidal, suicidal, accidental, or due to natural causes.

09. In the absence of any definite medical opinion about the cause of death, the prosecution case hinges entirely on the alleged ocular account and the surrounding circumstances. The only direct or circumstantial evidence initially available was the statement of the complainant and the so-called eye-witnesses, Passand Ali and Ali Zaman, who allegedly supported the FIR version at the investigation stage. However, all these witnesses have now, through duly sworn affidavits, retracted their earlier statements and have unequivocally exonerated the applicants and co-accused from the commission of the alleged offence.

10. It is pertinent to note that these witnesses, including the complainant, appeared before this Court in person. Upon specific enquiry, they affirmed on oath the contents of their affidavits and maintained that they no longer attribute any criminal liability to the present applicants or to their co-accused. There is nothing on record to suggest that these affidavits are the result of coercion, duress or any improper inducement. In such circumstances, this Court cannot simply ignore their present stance, particularly when it is fully consistent with the negative medical evidence.

11. The legal position regarding the role of the Magistrate while dealing with a police report under section 173, Cr.P.C. is well settled. The Magistrate is not bound by the opinion of the Investigating Officer and may disagree with the same while taking cognizance, provided there is some tangible material indicating that a cognizable offence appears to have been committed. At the same time, the Magistrate's discretion is judicial and not unfettered; it must be exercised on sound legal principles and in the light of the entire record.

12. In the present case, the Investigating Officer recommended disposal of the case in "C" class, inter alia, on the grounds that the cause of death could not be ascertained, no incriminating forensic or circumstantial evidence was found, and the main witnesses had either not supported or had withdrawn from the prosecution version. The learned Magistrate, while declining to accept the "C" class summary, has not pointed out any independent incriminating material that would justify taking cognizance. The impugned order appears to be premised merely on the fact that the applicants were named in the FIR and were allegedly last seen with the deceased.

13. Mere mention of the applicants' names in the FIR, without any supporting medical, ocular or circumstantial evidence surviving on record, cannot by itself furnish a valid foundation for criminal prosecution. When the entire ocular account has collapsed by reason of the affidavits of the complainant and witnesses; when the medical evidence is neutral to the extent that even the cause of death is not determined; and when the Investigating Officer, after full investigation, opines that the case is fit for "C" class, the continuation of proceedings would amount to an abuse of the process of the Court and an unwarranted harassment of the applicants.

14. The inherent jurisdiction of this Court under section 561-A, Cr.P.C. is intended precisely to prevent such abuse and to secure the ends of justice. Where the chances of conviction are bleak, where the evidence ultimately

available is inherently deficient, or where continuation of the proceedings would serve no useful purpose, the Court may quash the FIR and the subsequent proceedings in order to prevent misuse of the criminal process.

15. In the totality of circumstances of this case, negative autopsy, unascertained cause of death, absence of corroborative material, complete retraction by complainant and material witnesses, and the Investigating Officer's recommendation for "C" class , this court is constrained to hold that no admissible or credible material remains on record which could justify the cognizance taken by the learned Magistrate or the continuation of the criminal proceedings against the applicants and their co-accused. The impugned order dated 29.09.2025, therefore, is not sustainable in law and calls for interference by this Court. Resultantly, the impugned order dated 29.09.2025 passed by the learned Civil Judge & Judicial Magistrate-I, Thari Mirwah, is hereby set aside. The report submitted by the Investigating Officer under section 173, Cr.P.C., proposing disposal of the case in "C" class, is approved. Consequently, FIR No. 52/2025 of Police Station Setharja, registered under sections 302, 201 and 34, PPC, together with all proceedings arising therefrom, is hereby quashed.

16. In view of the above order whereby the FIR itself and the subsequent proceedings have been quashed, learned counsel for the applicants does not press Criminal Bail Application No. S-515 of 2025. The said bail application is, therefore, dismissed as not pressed. The interim pre-arrest bail order dated 19.06.2025 is recalled.

17. Office is directed to place a signed copy of this order in the connected matter.

J U D G E