

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. S-361 of 2025

(Bhagiyal Khan Chachar vs Province of Sindh and others)

along with the connected C.P No. S- 151, 152, 153 of 2024, 56, 117, 238, 251, 283, 286, 291, 293, 316 and 336 of 2025, 02, 14, 16, 47 of 2026.

Date of hearing	Order with the signature of Judge
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Before:-

Mr. Justice Ali Haider 'Ada'.

Date of Hearing: 06.03.2026.

Date of Decision: 19.03.2026.

M/s Farooque Ahmed Halepoto, Bakhshan Khan Mahar, Abdul Ahad Buriro, Shabbir Ali Bozdar, Ghulam Murtaza Korai, Anwer Hussain Lohar, Badaruddin Memon and Ghulam Ali Bozdar, , Advocates for the Petitioners.

M/s Abdul Baqi Jan Kakar, Pervez Ali Siyal, Muhammad Hanif Kalhoro and Javed Miandad Chandio, Advocates representing the petitioners in C.P No.S-151,152 and 153 of 2024, C.P No. S-56 of 2025 and C.P No. S-16 of 2026 are called absent.

Syed Naveed Ahmed Shah, Deputy Attorney General.

Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

Mr. Agha Ather Hussain Pathan, Assistant Advocate General.

Mr. Adnan Arshad Jatoi, Special Prosecutor, NAB, Sukkur

Mr. Muhammad Bilal, Special Prosecutor, ANF.

(FIA)

Mr. GianParkash, Assistant Director (Legal) FIA Sukkur along with Sadam Hussain Soomro on behalf of Additional Director FIA Crime Circle, Sukkur

Pakistan Railways

KhawarKhursheed, DSP, Pakistan Railways

Attaullah (Inspector Legal) Pakistan Railways Police Sukkur

Narcotic Control, Sukkur

Muhammad ShoaibChanna, Deputy Director, Narcotics Control, Sukkur

Anti-Corruption, Sukkur

Ikram Ali Mugheri, Deputy Director, ACE, Sukkur

Anti-Narcotic force

Major Hafiz Sana-ur-Rehman, Assistant Deputy Commander, ANF, Sindh.

Salman Shoukat, Assistant Director, ANF, Sukkur

District Police KhairpurMirs

SIP GhulamAsgharUjjan, on behalf of SSP, KhairpurMirs

SIP Agha Abid Ali, SHO PS Khuhra
 SIP Abdul Majeed, SHO PS FaizGanj
 SIP Azhar Hussain Shah,
 Inspector GhulamAsghar, SHO PS MehboobKalhoro
 Asghar Ali, SHO PS Landhiyoon.
 SIP ShamsuddinSial, SHO PS K.B (i)(ii)
 Inspector Shah Nawaz Samtio, SHO PS Phuloo.

District Police, Ghotki

Inspector Abdul Waheed Bhutto, SHO PS MirpurMathelo on behalf of
 SSP, Ghotki and DSP MirpurMathelo
 SIP Abdul Fatah, SHO PS 'A' Section, Ghotki.
 SIP Liaquat Ali Mahar, SHO PS KhanpurMahar
 SIP Ghulam Akbar of PS Daharki on behalf of SSP, Ghotki
 Inspector Muhammad AslamChachar, SHO PS Andal Sundrani

District Police, Sukkur

Abdul Ghafoor Lakho, SP (Investigation) Sukkur on behalf of DIG
 Police Range, Sukkur
 Shafi Muhammad Khaskheli, DSP (Legal) on behalf of SSP and DIGP,
 Sukkur
 Atta Muhammad Soomro, DSP (Legal) on behalf of SSP, Sukkur
 GhulamQadir Bhutto, SHO Police Station, Jhangro.
 Inspector Abu Bakar Gabol, SHO Police Station, Kandhra.
 Inspector Muhammad Ramzan.
 SIP Aijaz Ahmed, SHO PS Dadloi.

District Police, NaushahroFeroze

Inspector/SHO Aftab Ahmed Shar, SHO PS Abran on behalf of SSP,
 NaushahroFeroze.
 SIP Zulfiqar Ali Ujjan, SHO PS Kandiaro
 QamberGhanghro on behalf of SSP, NaushahroFeroze

District Police ShaheedBenazirabad (SBA)

ASP Pehlwan Shaikh, PS Daur, District SBA.

ORDER

Ali Haider 'Ada' J; The above-captioned petitions mainly turn around a
 common and substantial question, that whether the police functionaries
 and other law enforcement agencies have duly fulfilled their legal
 obligations in accordance with the law.

2. In this regard, it has been consistently observed that, subsequent
 to the registration of the First Information Report (FIR), the nominated
 accused persons have not been apprehended by the concerned law
 enforcement organizations. This recurring omission reflects a failure on
 the part of the authorities to ensure compliance with the mandate of the

law. Consequently, a common grievance has arisen in all the above-captioned petitions, wherein it has been asserted that despite the nomination of accused persons in the FIRs, no effective steps have been taken for their arrest.

3. In view of the above, the primary question for determination before this Court is whether the lack of prompt action on the part of the law enforcement agencies warrants the issuance of appropriate directions to ensure strict enforcement of the law and compliance with statutory duties. In this context, this Court, having taken note of the matter, has issued notices to all concerned quarters vide orders dated 16.02.2026, 20.02.2026, and 27.02.2026.

4. In compliance with the directions of this Court, a statement has been filed on behalf of the National Accountability Bureau (NAB) by the Director, Investigation Wing, NAB Sukkur. The said statement is accompanied by the relevant policy framework as prescribed under the Standard Operating Procedures (SOPs) of NAB, particularly with reference to Chapter-8 thereof, which governs the procedure relating to absconding and proclaimed offenders. The crux of the said policy reveals that, for the purpose of dealing with absconders and proclaimed offenders, a comprehensive mechanism has been prescribed. Such measures include, inter alia, issuance of summons to the accused persons, affixation of notices at noticeable places, and publication of notices in widely circulated newspapers. Furthermore, proceedings under Section 31-A of the National Accountability Ordinance, 1999, read with Sections 87 and 88 of the Code of Criminal Procedure (Cr.P.C.), are to be initiated in accordance with law. Additionally, it has been stated that, with the assistance and coordination of other law enforcement agencies, further coercive and preventive steps are undertaken, including freezing of bank accounts, placement of the names of accused persons on the Exit Control List (ECL), and distribution of information through border security systems to prevent their escape or movement. The National Database and Registration Authority (NADRA) are also engaged for the purposes of verification and tracing of the absconders, including ascertaining their current status and whereabouts. Moreover, in cases where the absconders are

believed to be residing abroad, additional measures are initiated to trace their location through relevant governmental secretariats and through method of mutual legal assistance, with due consideration of international cooperation frameworks. Assistance is also sought through the concerned embassies of the respective countries. In instances where extradition treaties exist with the country concerned, appropriate proceedings are initiated to secure the return of such accused persons to face trial. Furthermore, recourse is made to Interpol for the issuance of Red Notices, and other necessary legal and procedural steps are undertaken to ensure the presence of the accused/absconders before the Court and to bring them within the ambit of the law.

5. Insofar as the Federal Investigation Agency (FIA) is concerned, a report has been submitted by the Additional Director, FIA Crime Circle, Sukkur. The salient features of the said report indicate that a comprehensive mechanism is already in place for the arrest and apprehension of absconders. It has been stated that, upon registration of an FIR, the matter is processed under a distinct set of federal protocols. In this regard, reliance is placed upon systems such as the Integrated Border Management System (IBMS), which is utilized to monitor and restrict the movement of accused persons across borders. Furthermore, the names of such absconders are placed on the Exit Control List (ECL) as well as on the Provisional National Identification List (PNIL), thereby ensuring that their movement is effectively curtailed. The report further elucidates that the National Central Bureau (NCB) of Interpol is approached for initiating the process relating to the issuance of Red Notices against proclaimed offenders, enabling international tracking and cooperation for their apprehension. Additionally, various forms of technical and inter-agency assistance are sought and employed to ensure the tracing, monitoring, and eventual production of absconders before the competent Court of law.

6. Further, in compliance with the directions of this Court, a statement along with a detailed reply has been submitted on behalf of the Anti-Narcotics Force (ANF) by the Regional Director/Commander, representing the Director General, ANF. In the said reply, reliance has

been placed upon the applicable Standard Operating Procedures (SOPs), which prescribe a structured mechanism for the apprehension of absconders. It has been stated that, in the first instance, all necessary measures are undertaken for the effective service and execution of warrants. For this purpose, coordination is established with the NADRA, local police authorities, and other relevant law enforcement agencies, as well as immigration authorities, to trace and verify the whereabouts of the accused persons. Subsequently, where the accused persons fail to appear, proceedings for proclamation are initiated in accordance with law. In cases where the absconders are believed to be residing abroad, the matter is referred to Interpol through the concerned Regional Directorate, along with all requisite documentation and supporting material, for appropriate action at the international level. Moreover, the Ministry of Narcotics Control/ Ministry of Interior are also engaged and kept in coordination to facilitate necessary steps for tracing and repatriation of such absconders. Ultimately, it has been asserted that all requisite legal and procedural measures are undertaken in order to secure the arrest of the absconding accused persons and to ensure their production before the competent Court of law.

7. Likewise, a statement has been submitted by the Director, Narcotics Control, Sukkur, wherein the mechanism adopted for the apprehension of absconders has been outlined. The primary stance taken therein is that close and continuous coordination is maintained with various law enforcement and intelligence agencies for the purpose of tracing and apprehending absconding accused persons. It has been asserted that such inter-agency collaboration forms the keystone of effective enforcement and is consistently pursued to ensure that absconders are brought within the fold of law.

8. Similarly, the Pakistan Railways Police has submitted its position, stating that intensive efforts are undertaken for the arrest of proclaimed offenders and absconders. In this regard, reliance has been placed upon a Centralized Special Team constituted within the Railway Police, comprising designated officers tasked with tracing and apprehending such offenders. It has further been stated that the mechanism so

adopted is in accordance with the procedures prescribed under the relevant law, and that continuous efforts are made to ensure compliance therewith.

9. Furthermore, the stance of the Anti-Corruption Establishment, Sukkur, has also been placed on record. It has been submitted that the prescribed legal procedure for the arrest of absconders is duly followed, which includes initiation of proclamation proceedings, issuance of court notices, and execution of warrants of arrest. It has further been stated that, in appropriate cases, additional coercive measures are adopted, including freezing of bank accounts, suspension or blockage of other entitlements, and placement of the names of accused persons on the Exit Control List (ECL), in accordance with law.

10. As regards the ordinary/local police, various reports and statements have been filed by the concerned officials. The primary stance taken therein is that, in addition to adherence to the procedure prescribed under the Police Rules, 1934, modern technological tools have also been introduced to enhance the effectiveness of operations. In this context, reliance has been placed upon the Eye Management System and the Talash device, which are utilized for identification, tracking, and apprehension of accused persons. It has further been stated that, in terms of the applicable rules, proper record-keeping mechanisms are maintained, including the upkeep of relevant registers and the constitution of dedicated committees. Periodic, including monthly, reviews and sorting systems are also conducted with a view to ensuring the arrest of absconders and the effective implementation of the law.

11. Learned counsel for the petitioners, as well as the petitioners in person, have been heard at length. The principal contention advanced on their behalf is that, despite the registration of FIRs and, in many cases, specific nomination of the accused persons coupled with submission of challans before the competent Courts, the accused have not been apprehended. It has been vehemently argued that, in the majority of cases, the accused persons have neither obtained pre-arrest or post-arrest bail nor have they surrendered before the Courts of law

or the investigating agencies. On the contrary, they continue to roam freely, and are allegedly moving about without any restraint, thereby posing a serious threat to the complainant parties. It has further been asserted that such accused persons are actively intimidating the complainants, their family members, and witnesses, coercing them to enter into compromises under threats of dire consequences affecting life and liberty. Learned counsel/s have further contended that the non-arrest of absconders and proclaimed offenders has resulted in a disturbing trend, whereby criminal cases are being compromised not on account of genuine resolution of disputes, but due to fear, coercion, and intimidation exercised by such accused persons. This, according to them, undermines the very foundation of the criminal justice system. It has also been pointed out, with considerable concern, that many absconders, including those allegedly involved in heinous offences such as dacoity and murder, are actively using social media platforms; however, no effective steps are being taken by the law enforcement agencies to trace or apprehend them through the use of modern technological means. Learned counsel/s further submitted that, in certain instances, multiple offences of a grave nature have been committed by the same accused persons, who continue to evade arrest solely on account of their status as absconders and fugitives from law. Attention of this Court has also been drawn to the fact that some of the absconding accused persons are, in fact, government servants, yet no meaningful or effective departmental or legal action has been initiated against them by the concerned authorities. In view of the such circumstances, the petitioners have approached this Court by way of the instant petitions, contending that even the trial Courts have failed to take effective or strict measures to secure the attendance of the accused persons, and, in many cases, the matters have been kept in abeyance or consigned to dormant files without any substantial progress.

12. Syed Naveed Ahmed Shah, learned Deputy Attorney General has advanced arguments on behalf of the Federation, submitting that an effective and comprehensive mechanism has been developed within the Federal law enforcement framework, including agencies such as the National Accountability Bureau (NAB), Federal Investigation Agency

(FIA), Anti-Narcotics Force (ANF), and the Pakistan Railways Police, amongst others. It has been contended that an integrated system, including the Integrated Border Management System (IBMS), has been put in place to monitor and regulate the movement of accused persons. Under this mechanism, relevant data of accused individuals is shared and coordinated with immigration authorities, enabling real-time alerts at all airports, seaports, and land border entry and exit points. Furthermore, it has been submitted that biometric verification systems, linked with the NADRA, are actively utilized to identify and trace absconders. In addition, mechanisms such as the Provisional National Identification List (PNIL) and the Exit Control List are maintained and enforced to restrict the mobility of accused persons and prevent their escape from the jurisdiction of the country. The learned Deputy Attorney General has also emphasized that international coordination mechanisms, including those facilitated through Interpol, are fully operational to ensure that absconders who flee abroad may be traced and brought back in accordance with law. It has thus been asserted that all necessary measures have been developed and are being implemented with the objective of protecting society from fugitives of law and curbing the practice whereby individuals, after being nominated in criminal cases or subjected to inquiry or legal proceedings, attempt to avoid the process of law instead of submitting themselves before the competent authorities. In support of these submissions, a written synopsis has also been filed.

13. Syed Sardar Ali Shah Rizvi, learned Additional Prosecutor General, appearing on behalf of the Province, has submitted that, despite limited resources, the police have made earnest efforts to apprehend the accused persons. However, it has been candidly acknowledged that the local police do not possess the same level of resources, infrastructure, and technological support as is available to specialized Federal law enforcement agencies/organizations, such as the NAB and FIA. It has been contended that the local police, in fact, constitute the primary and principal agency responsible for the prevention of crime, maintenance of law and order, and initial response to criminal activity. All other law enforcement agencies, to a

considerable extent, rely upon the groundwork and support provided by the local police. Despite this essential role, it has been argued that insufficient attention has been given towards the capacity-building and modernization of the police force. While certain initiatives, such as the introduction of the Eye Management System, have been undertaken, the same are not sufficient to effectively address the challenges of crime prevention, apprehension of accused persons, and maintenance of public order in its true sense. The learned Additional Prosecutor General has further submitted that the role of the trial Courts, in this regard, has also remained largely passive. It has been pointed out that, in a number of cases, proper proclamation proceedings are not undertaken in accordance with law. Instead, accused persons are declared proclaimed offenders merely on the statements of police officials, without strict compliance with the prescribed legal procedure. Consequently, such cases are often consigned to dormant files, without any meaningful progress towards securing the presence of the accused persons or concluding the trial.

14. Mr. Agha Ather Hussain Pathan, learned Assistant Advocate General has submitted that, despite restricted resources, the Sindh Police has made comprehensive efforts to apprehend absconders and proclaimed offenders. It has been contended that, while previously the number of such absconders was significantly high, due to the serious and concerted efforts of the Sindh Government and the police, the ratio of proclaimed offenders and absconders has now been substantially reduced and continues to be monitored. It has further been submitted that it is a primary duty of law enforcement agencies to act upon any credible information provided by the complainant parties, even if such information is not already in the control of the authorities. Proper coordination with the complainant and other concerned quarters is necessary to further decrease the number of absconders and to develop a society that is free from the intimidation and threats posed by fugitives of the law.

15. Heard learned counsel at length and perused the relevant provisions of law, along with the record, reports, and the entire material placed on file during the course of proceedings.

16. It has come on record that most of the law enforcement agencies, despite the existence of relevant laws, have developed and implemented their own Standard Operating Procedures (SOPs), specifically tailored for the arrest of accused persons, apprehension of criminals, and tracing of absconders. These SOPs are intended to safeguard society and ensure public security. During the proceedings, it has also been noted that these agencies coordinate and remain in constant liaison with one another to maximize the effectiveness of their efforts.

17. However, despite these measures, the phenomenon of abscondence has not been entirely eliminated, and it cannot be said, in the present scenario, that society is free from the threat posed by fugitives from the law. Even though many agencies are equipped with the latest technology and modern investigative tools, they have not been able to completely eliminate abscondence.

18. This Court is of the view that one of the principal reasons for this situation is the **lack of proper judicial supervision over the implementation of these mechanisms**. While the agencies have relied on their SOPs and taken measures under various provisions, and other relevant statutes, the enforcement of these measures has not been monitored in a manner that ensures their full effectiveness.

19. It is also noted that law enforcement agencies, and other specialized bodies, function in a manner analogous to the police in such matters. In this context, the relevant law pertaining to the powers of the police requires discussion. The police are authorized to arrest an accused even without a warrant. In this regard, **Section 54 of the Code of Criminal Procedure** empowers the police to effect arrest. For ready reference, the provision is reproduced as follows:

B. – Arrest without Warrant

54. When police may arrest without warrant: (1) Any police-officer may, without an order from a Magistrate and without a warrant arrest-

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible

information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Provincial Government;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing ;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has; escaped, or attempts to escape, from lawful custody ;

sixthly, any person reasonably suspected of being a deserter from the armed forces of Pakistan;

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Pakistan, which, if committed in Pakistan, would have been punishable as an offence and for which he is under any law relating to extradition or otherwise liable to be apprehended or detained in custody in Pakistan;

eighthly, any released convict committing a breach of any rule made under Section 565, sub-section (3);ninthly, any, person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

20. So far as the Courts are concerned, they are required to strictly adhere to the procedures prescribed under the relevant statutory provisions of law for dealing with an absconding accused and, where warranted, declaring such person a proclaimed offender. In view of the necessity for ready reference, the relevant provisions of the **Code of Criminal Procedure** are reproduced herein.

C. – Proclamation and Attachment

87. Proclamation for person absconding: (1) *If any Court is satisfied after taking evidence that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2) *The proclamation shall be published as follows:*

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed, to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

88. Attachment of property of person absconding: (1) The Court issuing a proclamation under Section 87 may at any time order the attachment of any property, movable or immovable or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the [Sessions Judge] within whose district such property is situated.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made –

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(a) by all or any two of such methods, as the Court thinks fit.

(4) if the property ordered to be attached is immovable, the attachment under this section shall, in the case of land-paying revenue to the Provincial Government, be made through the [District Officer (Revenue)] in which the land is situated, and in all other cases--

(e) by taking possession ; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide, the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Order XL of the Code of Civil Procedure 1908.

(6-A) If any claim is preferred to or objection made, to the attachment of any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed

person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part :

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(6-B) Claims or objections under sub-section (6-A) may be preferred, or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a [Sessions Judge] in accordance with the provisions of sub-section (2) in the Court of such Magistrate.

(6-C) Every such claim or objection shall be inquired into by the Court [or Magistrate] in which it is preferred or made.

(6-D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6-A) may within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

(6-E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Provincial Government but it shall not be sold until the expiration of Six months from the date of the attachment and until any claim preferred or objection made under sub-section (6-A) has been disposed of under that sub-section, unless if is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

93-B. Sending of warrants for execution outside Pakistan: *Notwithstanding anything contained in Section 82, where a Court in Pakistan desires that a warrant, issued by it for the arrest of an accused person shall be executed at any place outside Pakistan within the local limits of the jurisdiction of a Court established or continued by the authority of the Federal Government in exercise of its foreign jurisdiction, it may send such Warrant, by post or otherwise, to the presiding officer of that Court to be executed*

93-C. Service and execution in Pakistan of processes received from outside Pakistan: *(1) Where a Court has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by a Court established or continued by the authority of the Federal Government in exercise of its foreign jurisdiction, outside Pakistan it shall cause the same to be served or executed as if it were a summons or warrant received by it from a Court in Pakistan for service or execution within the local limits of its jurisdiction-*

(2) Where any warrant of arrest has been so executed the person arrested shall so far as possible be dealt with in accordance with the procedure prescribed by Sections 85 and 86.]

21. Upon perusal of the Police Rules, 1934, it is observed that detailed provisions have been laid down to establish a progressive mechanism for the maintenance of law and order, as well as the apprehension of absconding accused persons. For ready reference and guidance, the relevant provisions of the said Rules are reproduced hereunder:

26.1. General powers of arrest-Section 54, Code of Criminal Procedure, authorizes any police officer to arrest without a warrant any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion police to arrest without a warrant, is how ever permissive and not obligatory. Whenever escape from justice or inconvenient delay is likely trestle from the police failing to arrest they are bound to do so; but in no other cases. The law allows a police officer to apply to a Magistrate for a warrant or summons instead of making the arrest immediately, and this discretion shall be exercised whenever possible expedient.

26.2. Power to defer arrest- If the fact that suspicion rests upon particular person has been kept secret, and there is no risk of his absconding, the police shall defer making the arrests until the investigation is sufficiently complete; but if any inter absconding, and the facts justify arrest, the police shall arrest him and shall not interfere with his liberty unless they arrest him.

26.5. Warrants to be taken out when wanted persons abscond.- Permissive authority is given to the police to arrest without warrant in certain cases in order that they may not be handicapped by having to obtain a Magistrate's warrant under Section 204. Code of Criminal Procedure, when the arrest of a criminal or suspect who is present before them is urgent. The law provides, however, no penalty for merely evading arrest by a police officer, though it penalizes resistance to , or escape from ,such arrest. On the other hand the law does provide severe penalty or recalcitrance to an order in the form of a warrant by a Court , entirely. Respective of the evidence of the guilt of the person against whom the warrant is issued. For merely evading obedience to a warrant of arrest, a man is liable to proclamation and the confiscation of his property and any one who harbors him, as defined in Section 52-A of the Indian Penal Code, can also be severely punished. Whenever, therefore, a person is wanted, whose whereabouts are not immediately known, the notice shall, before setting off in search of him, obtain a warrant of arrest from the Court having jurisdiction. Unsuccessful search without such a warrant is merely waste of time. On the other hand immediately it is found that, in spite of all reasonable effort, a warrant cannot be executed, a proclamation order under Section 87, Criminal Procedure Code, can be obtained and, on proclamation being dully carried out, attachment under Section 88, Criminal Procedure Code, can immediately follow, and connivance by any person at the continued absconding of the person proclaimed becomes punishable under section 216, Indian Penal Code.

Rule 21-35. Defines the role of the Central Investigating Agency.

(h) To co-ordinate and guide the efforts of police station staff throughout the district in securing the arrest of absconders and proclaimed offenders and in locating absentee bad characters, criminal tribesmen and other untraced persons and to maintain close co-operations with the C.I.As. of other districts in this work.

22. In further addition the Chapter XXVII, titled “**Prosecution and Court Duties**,” Form No. 27.1(3), namely the Memorandum of Challan, elaborates the prescribed process for the Court and prosecution. In this context, **Serial No. 20** is particularly relevant as it pertains to the initiation of proceedings under Section 512, Cr.P.C, including a full description of absconding accused and a detailed list of property owned by such absconders. The remaining entries are also defined and elaborated in the Form for ready reference. The relevant portion is reproduced herein as follows:

20. Note in cases sent up for proceedings under Section 512, Criminal Procedure Code, if the full description of the absconders and list of the property owned by them are attached to the chalan. Whether separate report for obtaining the warrant of arrest of absconder was received, whether proceedings under Section 87/88, Criminal Procedure Code, have been started.

23. It is observed that, as per **Rule 11.52** of the Police Rules, 1934, a mechanism is provided whereby the Criminal Intelligence Gazette is published. This Gazette contains information regarding arrests, identifications of wanted persons, warnings, and other relevant matters. In particular, Rule 11.52(b) is also directly relevant in this context. The relevant provisions are reproduced herein for ready reference as follows:

***11-52. The Criminal Intelligence Gazette** – (1) The Criminal Intelligence Gazette is published by the Criminal Investigation Department. As much publicity as possible within the department shall be given to its contents, and information published in it regarding arrests and identifications wanted, warning, etc., shall be freely disseminated to the public ; the gazette as a whole, however, may not be shown to non-officials.*

***(b) Proclaimed offenders and absconders** [Form 23-22 (I)]. Notices shall be sent only when wide publicity is necessary as a warning against the offender and as an aid to his arrest, and when full particulars likely haunts, associates and description are available.*

24. Furthermore, registers are also maintained to record and monitor all proclaimed offenders. The relevant procedures and processes, as

prescribed under the applicable rules, are reproduced herein for ready reference as follows:

22.45. Registers.-- *The following books shall be maintained at each police station in accordance with the rules hereinafter prescribed or referred to:---*

(4) Register of Absconders and Deserters.

22.54 - Register No Absconders and deserters - *In addition of all proclaimed offenders to be hung up in the and the notice-board of police station in accordance with rule 23.25, the register of absconders shall be maintained in the following parts:---*

Part I-- In Form 22.54 (a) containing the names of all absconders in cases registered in the home police station.

Part II. -- In Form 22.54(a) containing the names of absconders in cases registered in other police stations, but resident of or likely to visit the home police station.

Note . -- All entries regarding residents of the home police station shall be made in red ink.

Part III. -- List of deserters from the army, in Form 26-16(6)

Part IV. -- A list in Form 22-54(b) of all absconding members of registered criminal tribes resident of the police station or who were originally registered at the police station. In this connection see rule 23-24(3).

As soon as an absconder has been proclaimed under section 87, Code of Criminal Procedure, his name shall also be entered among the proclaimed offenders in Part I of Register No. X.

27.16 Registers to be maintained by prosecuting Deputy Superintendent or Inspector – *The head of the police prosecuting agency shall, with the help of his assistants, maintain the following registers:---*

(a) This register shall be in the same form as register No. 1, and shall contain copies of any entries in register No. 1 referring to property which has been in the custody of the police for over three years. Property in cases in which the accused are absconding, and the retention of which is necessary for purposes of evidence, may be transferred to this register as soon as proceedings under Section 512, Code of Criminal Procedure, are complete.

23.19. District register of absconders-(1) *In each districts a register of absconders in Form 23.20 (1) shall be maintained by the head of the prosecuting agency. The register shall be divided in to two parts:---*

Part I- will contain the names of all absconders in cases of the home district, irrespective of the residence, about whom information in Form 22. 54 (a) or otherwise.

Part II-will contain the names of absconders in cases of other districts who are resident of the home district or likely to visit it. All entries regarding residents of the home districts shall be made in red ink.

The names in both parts shall be entered as far as possible, according to the police station s of which the absconder is resident or from which he is absconding.

(2). As soon as an absconder has been proclaimed under section 87, Code of Criminal Procedure, his name shall be entered in the Proclaimed Offenders register prescribed in rule 23.22(1). A note being made in the column for remarks to his effect.

(3).Should action under section 87, Code of Criminal Procedure, no the taken against an absconder for any reason, such as lack of evidence etc. his name shall be struck out and remark added giving reasons in the column for remarks.

(4).When a person whose finger impression slip is on record absconds, information of the fact shall be sent to the Finger Print Bureau. All re-arrest of such absconders shall be communicated to the Finger Print Bureau.

(5). When a criminal tribesmen restricted under the section 11 of the Criminal Tribes Act absconds, information of the fact together with as many particulars of the individual as possible, shall be communicated promptly to the Assistant to the Inspector General, Criminal Tribes. All re-arrest of such absconders shall be communicated to that officer in a monthly return to be submitted in the first week of each month.

Note: (1)-- The terms absconder shall be held to mean a person of a cognizable offence against the officer in charge of the police station concerned considers that there is sufficient evidence to justify his arrest, but whose whereabouts are unknown.

Note: (2)-- A separate register shall be maintained for absconding member of criminal tribes wanted in connection with offences under the Criminal Tribes Act.

23.20. Register showing progress of action against absconders and proclaimed offenders.-- *In order that a proper check may be kept on the progress of action prescribed in rule 21.5. and 26.5, the head of the prosecuting agency, shall maintain a register Form 23.21. The register shall be examined at frequent intervals by the Superintendent of Police, gazetted officers and inspectors in supervisory charge of police stations and by prosecuting officers, and the latter shall be held responsible that no delay in proclamation and attachment of property or the court, is allowed to occur.*

23.21. Register of proclaimed offender--*(1) A register of proclaimed offenders in Form 23.22 (1) shall be maintained in each district by the head of the prosecuting agency. The register shall be in two parts:---*

Part I-- shall contain the names of all residents of the home district irrespective of the district in which proclaimed. The names shall be entered according to the police station of which the proclaimed offenders are resident.

Part II-- shall contain the names of all offenders proclaimed in but not resident of the district. These will be entered as far as possible, according to the district of which they are said to be resident, residents of independent territory being shown separately.

(2). In January of each year a statement in English in form 23.22(2) shall be submitted to the Deputy Inspector-General Criminal Investigation Department showing the result of action taken against proclaimed offender during the past year. An abstract of such a statement shall be prepared in the office of the Deputy Inspector-General Criminal Investigation Department and published in the Police gazette. The figures relating to proclaimed offenders, who are registered member of the criminal tribes, shall be given separately.

25. Moreover, under the Police Rules, 1934, a specific procedure is prescribed for action against absconding police officers. A vital factor in both the detection and prevention of crime is the effective execution of the law in respect of absconding offenders. The relevant procedures and processes are elaborated in the following rules:

14.11-A. Procedure for action against an absconding police officer – *If an enrolled police officer without draw from the duties of his office without permission or without having given two months' previous notice prescribe in rule 14.11(2) or, being absent on leave, fails, without reasonable cause to report himself for duty on the expiration of such leave, he shall be prosecuted, under Section 29 of the Police Act, 1861, and a warrant for his arrest shall be applied for. If the officer absconds or conceals himself so that the warrant cannot be executed, an application shall be made to the Court for the publication of a written proclamation under Section 87 of the Code of Criminal Procedure. If the Proclamation is made and the police officer so proclaimed fails to appear within the statutory period of thirty days, he may be dismissed or otherwise dealt with at the discretion of the police officer empowered to appoint him, under rule 16.2(2).*

21-5. Absconders and Harbourers.--(1) *A Vital factor in both the detection and prevention of crime is the execution of the law in respect of absconding and harbouring. The provisions of the law are adequate to prevent both these offences but their proper and comprehensive administration demands the constant attention of Magistrates and supervising police officers. The absence or prevalence of absconding and harbouring are among the acid tests of the efficiency of the criminal administration.*

Instructions as to the taking out and execution of warrants when persons, whose arrest is required, are not immediately found, are contained in rule 26.5. This is the first essential. Under Section 87, Code of Criminal Procedure, any Court may at any time issues a proclamation against a persons for whose arrest that court has issued a warrant. All that is necessary is that the court should be satisfied, not necessarily by evidence, that the said person “ has absconded or is concealing himself so that such warrant cannot be executed”. The court may further at any time after proclamation “ order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person”. The period of thirty days mentioned in Section 87, Code of Criminal Procedure, is that within which the absconder is called upon to surrender, it imposes no delay on the issue of attachment order. The issue of a proclamation under Section 87, Code of Criminal Procedure, renders liable to the penalties of Section 216, Indian Penal Code, any one who gives to the person proclaimed any assistance of the nature described in Section 52-A, Indian penal Code.

(2) The action prescribed in rule 26.5 for obtaining a warrant of arrest shall be taken by the police immediately they have grounds for making such arrest. Every reasonable efforts to execute such warrant shall then be taken. If such efforts fails, the court which issued the warrant must be satisfied that the warrant cannot be executed; evidence of the guilt of the wanted man in the offence under investigation is not required. When a proclamation order has been obtained, the police are bound to publish that order as required by Section 87(2), Code of Criminal Procedure. Immediately this has been done that requirements of Section 87(3), Code of Criminal Procedure, shall be complied with. Thereupon, the person wanted becomes a “ proclaimed offender” and the rules in Chapter XXIII regarding the entry of such person’s name in the surveillance register, list of proclaimed offenders, notices to village headmen and watchmen of all places where he has connections or which he is likely to visit etceteras shall be forthwith complied with.

(3) The procedure of search under warrant and proclamation shall be carried out in every case in which a wanted person cannot be immediately arrested without warrant by the investigating officer. Discretion may be exercised by both the police and Magistrates whether to proceed with attachment of property under Section 88, Code of Civil Procedure, in every case, where there is danger of more crime resulting from and absconder remaining at large and attachment order shall be immediately applied for. The police are not authorized to carry out attachment, but it is the duty of the prosecuting branch to see that the necessary orders issued from the court without any delay, and of the officer conducting the investigation to take steps to prevent the improper alienation of attachable property by fictitious mortgage or sale. For this purpose lists of such property should be made, as part of the investigation, and attached to the police file of the case, and the village headman concerned should be directed to report any attempt at alienation or removal pending the issue of attachment orders. The lists of property

prepared by the investigation officer, attested by competent witnesses, should be put into court with the application for an attachment order.

(4) To prevent harbouring, without which no absconder can remain at large, thorough publicity in regard to the issue of a warrant and subsequent proclamation order is essential. If this receives proper attention, the defence of ignorance is denied to the persons who can be proved to have rendered any sort of assistance to an absconder.

26. Now, a comprehensive process is provided under Chapter XXIII of the Police Rules, 1934, regarding the prevention of offences. This Chapter also sets out the procedures for tracing the whereabouts of proclaimed offenders and absconding persons, including the issuance of Hue and Cry notices. The provisions of the Chapter, together with the relevant rules, are reproduced herein for ready reference as follows:

CHAPTER XXIII.--PREVENTION OF OFFENCES

23.1. Patrolling at rural stations--*(1) The officer in charge of police stations and assistant sub-inspectors at those stations shall move about in their jurisdiction freely. They shall pay special attention to villages where crime has occurred, or where registered bad characters and suspects whose history sheets are on record live, but shall visit every village occasionally, for the purpose of adding to their local knowledge, becoming known to the people, collecting information, and checking the proper performance of their duties in relation to crime by zaildars, in a mkhors, lambardars and chaukidars.*

*(2) Information regarding the mode of live hood of bad characters shall be obtained mainly by personal visits and inquiry, but head constables and constables shall, from time to time, be sent to village with definite orders to ascertain whether certain specified bad characters are present or not, **and trace the whereabouts of proclaimed offenders of absconders.***

Except to carry out definite orders constables shall not be deputed to visit villages, but they may be deputed to visit series, ferries, camping-grounds, motor vehicles stands and other places of public resort for the purpose of collecting information, maintaining order or other police purposes.

23.17. Hue and cry notices.--*(1) Whenever it is required to have a search made for an absconding suspect, or to issue warnings for precaution to be taken against a particular type of offence or particular individuals, the officer in charge of the police station or the investigating officer shall, in addition to such action as may be taken in accordance with rule 26. 5, issue a hue and cry notice in Form 23.18 (1). The officer who decides to issue such a notice shall personally complete the original form,*

recording all descriptive and other information, which may assist the recipient of the Form- to take effective action, paying particular attention to the specification of the routes and places to be watched. He shall cause the original form to be conveyed as speedily as possible to the police station , with precise instruction as to where copies are to be sent after the necessary entry has been made in Register No. IV, Hue and cry notices shall not be broadcaster indiscriminately, but shall be sent with the utmost dispatch to those places, whether within or outside the jurisdiction of issue, where special action is required. In all cases, when an absconder is likely to travel by railway, copies of hue and cry notices shall be sent to the railway police stations and outposts concerned.

(2). A copy of every hue and cry notice of an absconder shall also be sent to the officer of the Superintendent of Police, in order that an entry may be made in the district register of absconders (rule 23.20) and that, if the Superintendent of Police or head of the prosecuting branch thinks it fit, copies may be sent to other districts or to the 'Criminal Investigation Department.

(3). In cases where the absconder is known to have associates, relatives, or resorts in two or more districts and when the offender is not immediately arrested, a notice in Form 23.18(1) in English shall be sent to the Assistant Inspector-General, Crime and Criminal Tribes, for publication in the Criminal Intelligence Gazette. In cases where a reward is offered the amount should be stated on the form.

(4). Officers in charge of police station receiving hue and cry notices shall take immediate action, as the circumstances of each case may indicate to be necessary.

(5). Care shall be taken that, whenever the necessity for action asked for in hue and cry notice ceases to operate, a notice of cancellation shall be issued to all to whom the original notice was sent.

27. Further, the lists of proclaimed offenders, as well as the procedures to be followed when a person is proclaimed offender, and the maintenance of proclaimed offender lists at police stations, shall be duly compiled and displayed. In this regard, the relevant rules are reproduced herein for ready reference as follows:

23.23. Revision of lists of proclaimed offenders.--*(1) Every Superintendent shall carefully revise his list of proclaimed offenders periodically and omit therefrom, after consultation with the District Magistrate and the Superintendent of the district in which such person was proclaimed, the names of person accused of trivial offences or concerned in cases where from lapse of time, no sufficient evidence is on record or is procurable.*

(2). Due intimation of such omission shall be sent to the officer-in-charge of the police station concerned; intimation shall also be sent to the Deputy Inspector General, Criminal Investigation Department, in those cases in which intimation of proclamation was given, or in which a notice issued in the Criminal Intelligence Gazette.

(3). A separate revised list shall be submitted for proclaimed offenders who are registered members of criminal tribes.

23.24. Procedure when person is proclaimed an offender --

(1). Immediately proceedings under section 87, Criminal Procedure Code have been taken, intimation shall be sent by the prosecuting agency to the police station initiating such proceedings and to the police station of which the proclaimed offender is believed to be a resident. Such intimation shall be sent through the Superintendent of Police concerned, if the person proclaimed is a resident of another district. The primary responsibility for securing the arrest of such offender rests with the police of the station in which he is a resident. Immediately on receipt of intimation of proclamation of a resident of the police station jurisdiction a history sheet shall be opened, particulars being ascertained from the police station, which has instituted proclamation proceedings, if necessary, and the offender's name shall be entered in part I of the surveillance register.

(2). Thereupon intimation in Form 23.24. (2) shall be sent to the headmen and watchmen of the village of which the proclaimed offender is resident, and intimation in the same form shall be sent separately and through the police stations concerned, to the headmen and watchmen of all villages where the proclaimed offender is known to have relatives or friends whom he is likely to visit. When the offender is resident of a police station other than that in which he is proclaimed, the officer-in-charge of the latter police station shall immediately furnish the police station of the offender's residence with all available information for the compilation of his history sheet and issue of notices.

(3). In the case of members of registered criminal tribes proclaimed solely for absconding from their area of restriction, intimation in form 23.24 (2) shall be issued to places where there is a likelihood of the offender being found, but names shall not be entered in the surveillance register or shall history sheets be prepared unless specially ordered by the Superintendent of Police.

(4). Whenever a proclaimed offender is arrested, intimation shall be sent direct to the district and police station of which he was a resident. On receipt of such intimation a note shall be made in the surveillance register of the date and place of arrest, and his name shall be struck off the register, and intimation issued. Respecting him shall be withdrawn and his history sheet submitted for orders of disposal.

23.25. List of proclaimed offender at police station--(1). A list shall be hung up in the office of each police station and a

duplicate thereof in conspicuous place on the police station notice board, of all proclaimed offenders whose names have been entered under rule 23.5 above in the surveillance register. List shall be similarly posted of all proclaimed members of criminal tribes whose names have not been entered in the surveillance register.

(2). Every police officer shall be instructed, as soon as possible after joining a police station in the names, descriptions and likely resorts of all proclaimed offenders included in the lists prescribed above. Police officers shall be frequently tested by officers in charge of police station and inspecting officers in their knowledge of proclaimed offenders and shall be required at all times, when moving about the jurisdiction, themselves to obtain all possible information which may facilitate the arrest of such offenders and to inform the public of the proclamation of arrest and of any reward offered, and warn them of the penalties of harbouring.

28. So far, it is further observed before this Court that a mechanism has also been developed for the recording of evidence in the absence of an accused. In this regard, the relevant provision, namely Section 512 of the Code of Criminal Procedure, is reproduced for ready reference as follows:

512. Record of evidence in absence of accused: *(1) if it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or send for trial to the Court of Session or High Court such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for the offence with which he is charged if the deponent is dead or incapable of, giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstance's of the case, would be unreasonable,*

(2) Record of evidence when offender unknown: if it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the First Class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may, be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or - incapable of giving evidence or beyond the limits of Pakistan.

29. Under Section 512 of the Code of Criminal Procedure, where an accused absconds, the law permits the preservation of the evidence of witnesses. This provision ensures that, at the trial of such accused, if any witness is deceased, incapable of giving evidence, or their presence cannot be secured without unnecessary delay, the statement previously recorded in the absence of the accused may be taken as evidence. This

principle has been fortified by the judgment of the **Arbab Tasleem v. The State, PLD 2010 Supreme Court 642**, wherein it was held that:

11. As a general rule of evidence only such statement is legal and admissible which is given during the course of judicial proceedings and is on oath and is taken by a person authorized under the law to take down the evidence and that it is made in the presence of the adverse party, giving the right to the adverse party to cross-examine the statement of such deponent.

12. To the above general rule of evidence there are two exceptions where a statement made by a witness without being cross-examined and made at the back of the accused person are made admissible. These two exceptions are; one covered under Article 46 of the Order when a person makes a statement as to the cause of his death and the second exception is under section 512, Cr.P.C. where an accused person absconds, law makes it permissible under section 512, Cr.P.C. to preserve the evidence, therefore, during the abscondence of an accused person statement of the witnesses are recorded with a view that if at the trial of the absconding accused such witness is either dead or has become incapable of giving evidence or his presence cannot be acquired without unnecessary delay, his statement previously recorded at the back of the accused can be taken into evidence.

13. On the analogy of section 512, Cr.P.C. where but for the fault on the part of defence a witness though available but was not cross-examined, his statement recorded in-chief would be legal and admissible in evidence.

30. The purpose of Section 512, Cr.P.C. is to preserve recorded evidence against an accused who has absconded and where there is no immediate prospect of his apprehension. Such deposition can be taken in evidence only if the deponent is deceased, or if his evidence cannot be procured without undue delay, expense, or inconvenience. The basic object of Section 512, Cr.P.C. is to exclude the possibility of loss of evidence at the time the accused is not available for trial. Statements recorded under the provisions of Section 512, Cr.P.C. are considered substantive evidence. Furthermore, no legal restriction exists on transposing the statement of a witness to a subsequent trial, as there is no apprehension that the accused would be prejudiced by such transposition. This principle has been reaffirmed in the judgments: titled **Tanveer Ahmad and 9 others v. The State and another, 2009 PCr.LJ 919 [Federal Shariat Court]**, **2021 P Cr. L J 1664 (DB-Lahore)**, **Mir Qad Ayaz v. Sabir Khan and another, 2016 PCr.LJ 709 [Peshawar]** In this context, reference may also be made to the case of **Manbodh v.**

Emperor, (AIR 1944 Nagapur 274), wherein the following principle was enunciated at page 275 of the report:

"Under the law a previous statement of a person who is not called as a witness at the trial is rigidly excluded unless specially allowed by statute, and in all cases where there is a statutory exception stringent conditions are imposed. Section 512 itself indicates that the statements previously recorded are not to be admitted unless the witness is dead etc. Therefore, before admitting such a statement in evidence at the subsequent trial the Court trying the case must be satisfied that the provisions of section 512 have been complied with."

31. Sections 87, 88, and 512 of the Code of Criminal Procedure, read with the Federal Capital and Sind Courts Criminal Circulars, Chapter VI, Part F-II, Rule 3, require that a case diary be maintained for every hearing, containing directions for the issuance of processes against absconding accused. However, it has been observed that, in practice, no such processes or notices to the surety of the accused have ever been issued. This principle was held in the case of **The State v. Muhammad Saleh and another, PLD 1980 Karachi 131**, The relevant paragraph from the judgment is reproduced as follows:

4. Another disturbing feature in the above cases is that no attempt was made to take proceedings under sections 87, 88 and 512, Cr. P. C. Chapter VI, Part F-II, of the Federal Capital and Sind Courts Criminal Circulars details the procedure for the recording of evidence in the absence of accused persons. Rule 3 in this Chapter emphasises that proceedings under section 512 should commence by evidence being taken and recorded (i) that the accused person has absconded; (ii) that due pursuit having been made, there is no immediate prospect of arresting him. An examination of the files of the cases in this category seems to suggest that the learned Magistrates concerned are wholly unaware of the provisions contained in the Criminal Circulars regarding the recording of evidence in the absence of accused persons as well as the provisions of sections 87, 88, 512 and 514, Cr. P. C. This indeed is a bad state of affairs and a matter of regret. The files in these cases are directed to be returned to the Courts concerned who should immediately take proceedings in the case as indicated in the Criminal Circulars and the aforesaid sections of the Criminal Procedure Code. After the necessary proceedings under section 512, Cr. P. C. have been taken and the evidence of witnesses, who are available, has been recorded, the cases should be kept on the dormant file, if the accused are found to be still untraceable.

32. The Honourable Apex Court, in the case of **Muhammad Ramzan v. Rahib and others, PLD 2010 SC 585**, settled the proposition of law that a Magistrate, after taking cognizance in cases triable by the

Sessions Court, is required to complete the proceedings under Sections 87, 88, and 512 of the Code of Criminal Procedure if, according to the challan, the accused are shown to be absconding. In the said dictum, it was held that:

20. The phrase "or send for trial to the Court of Session or High Court" appearing in section 512 of the Code clearly demonstrates that Magistrate who is empowered to send the case to the Court of Session has also power to record the evidence in absence of accused after declaring him absconder which can be done as required under sections 87 and 88 of the Code after issuance of warrants of arrest as provided under section 204 of the Code. Thus such Magistrate has power to initiate proceedings under sections 87 and 88 of the Code in a case triable by the Court of Session....."

33. In cases where an accused becomes a fugitive from law, it is obligatory for the trial Court to initiate proceedings under Sections 87 and 88 of the Code of Criminal Procedure. The trial Court is required to repeat warrants of arrest on subsequent dates if necessary; mere attempts to serve notices upon the accused are insufficient. Essential ingredients of Sections 87 and 88, Cr.P.C, including proper issuance and service of warrants, were often not fulfilled. Warrants were, in several instances, not affixed at conspicuous places, such as the residence of the accused. Furthermore, the trial Court did not receive reports from the concerned law enforcement agencies to ascertain whether the warrants had been effectively served. Such procedural lapses are clearly contrary to the provisions of Section 87, Cr.P.C. It is further noted that, when a proclamation is issued under Section 87, Cr.P.C, the Court may at any time order attachment under Section 88, Cr.P.C, of any property, movable or immovable, belonging to the proclaimed offender. This principle has been upheld in the judgments: titled **Rasool Bakhsh v. The State, PLD 2019 Balochistan 63 (DB), Muhammad Ashraf Malik and others v. Judge Accountability Court No. III, Islamabad and 3 others, 2021 PCr.LJ 953 [Islamabad-DB] and Mst. Zarizadgai v. Fida Muhammad and others, PLD 1989 Peshawar 10**, wherein it was held that:

10. Next falls for consideration the question of abscondence, if any, and its entailing effect. I have given my serious thought to the respective submissions made by the learned counsel for the parties and, having gone through the relevant law as embodied in sections 204 and 87 Code of Criminal Procedure. I find that the word "abscond" or, for that

matter, "abscondence", is not defined in the Code. According to Webster's New International English Dictionary, abscond means: (1) "to hide, withdraw, or be concealed", (2) "to depart clandestinely, to steal off and secrete one's self" It also means "hidden; concealed; secluded". Its etymological and ordinary sense is "to hide oneself" In either case he is stated to abscond.

11. The question as to from which point of time, after the occurrence, abscondence of the accused commences, section 87 (1) of the Code lays down that if any Court has reason to believe that any person against whom a warrant has been issued by it has "absconded" or is concealing himself or that the warrant cannot be executed, such Court may publish a written proclamation requiring, him to appear at a specified place and time before it. From this, it is evident that the proclamation is issued only if the Court has reasons -to believe, after issuing a warrant under section 204 of the Code and taking such evidence as is required to prove that the warrants so issued could not be served for the reason of an accused person's non-availability and his evasion thereof; that he has absconded or was concealing himself with a view to avoid his arrest. In this context, it appears that the term "abscond" has been used in section 87 Code of Criminal Procedure in ordinary sense and not in any technical sense. It would, therefore, follow that in the event of a warrant under section 204 of the Code having been issued and the evidence having been recorded to the effect that the accused is concealing himself with the purpose of avoiding the service of such warrant, the accused shall be deemed to be an absconder in the eye of law.

12. From the record of this case, it is evident that a warrant under section 204 of the Code was issued against the respondents and the evidence of the search warrants revealed that they were not available on their given address and avoiding the service of the warrant. So it can be said with certainty that their conduct as such does fall within the mischief of the word "abscondence". This view finds support from cases reported in *O . V . Forbes v . Emperor* A I R (30) 1943 Oudh 325, *State v. Girasia Bachubha* A I R 1954 Saurashtra 39 and *Bacha Said v. State* P L D 1978 S C 102.

13. Viewing the matter in this context and applying the principle as enunciated in *Awal Gul v . Zawar Khan* reported in P L D 1985 SC 402, I have no hesitation in holding that the accused-respondents, having become fugitive from law, had lost their normal rights granted F by procedural as also substantive law and their unexplained noticeable abscondence disentitled them to the concession of bail, notwithstanding the merits of their case, if any.

34. As observed, the relevant issue is further reinforced by the judgment in **Nasrullah v. Station House Officer, Police Station Jacobabad and 6 others**, PLD 2016 Sindh 238, wherein a detailed discussion on the subject was elaborated. The directions contained in the pertinent paragraphs of the judgment are reproduced herein for ready reference as follows:

43. Therefore, the Inspector General of Police, DIGPs and SSPs, as phase-1, are directed to:

i) ensure proper maintenance of relevant register(s), as insisted by Chapter-XXIII of Police Rules, 1934 at every police station or at relevant place, as explained by the relevant rules;

ii) ensure proper checking thereof periodically;

iii) ensure progress in this regard and reward to rightful and necessary action against negligent;

iv) ensure attachment of properties of such proclaimed offenders against whom proceedings under section 88, Cr.P.C. stood completed by approaching concerned Mukhtiarkar or head of Revenue authority at district level;

v) ensure creation of well-organized website(s) containing details of proclaimed offenders and absconders wanted by the concerned Courts as well as Police Stations concerned of relevant districts with friendly use/utility for private informants, whereby the information conveyed by the informant should be sent automatically to the concerned I.O/Police Station, S.S.P and District and Sessions Judge simultaneously. Needless to add here that secrecy of private informant from general public should be ensured;

vi) ensure wide circulation of information regarding creation of such website(s) for general public in electronic and print media, seeking their cooperation in arrest of those proclaimed offenders and absconders with assurance of their anonymity of informants in order to curb the criminal elements at large;

vii) ensure proper display, communication and update of information/data of absconders/proclaimed on such website periodically;

In second phase, they are further directed to:

a. establish 'Cells' on districts and divisions levels specifically for the purpose of maintaining record of such persons, which shall be fully equipped with modern devices;

b. the Cells shall develop a relation-nexus with NADRA in getting/collecting data of such persons;

c. the Cells shall also develop a mechanism by consultation with Member, Board of Revenue, Sindh, so as to have the details of properties of all such persons and to proceed for attachment thereof;

d. the Cells shall also develop a net-working with consultation of State Bank for getting/obtaining details of Bank-accounts of such persons and then to process such information to concerned court(s)/authority for necessary order of attachment / seizure e.t.c as, such money falls within meaning of Section 88(3(a) of the Code;

e. the Cells shall also communicate details of proclaimed offenders to F.I.A for placing their names in E.C.L (Exit Control List).

A detail report regarding efforts taken towards first phase, shall be communicated to this Court within a period of one month, wherein detailing the issuance of 'reward to deserving'; 'action against negligent' and progress in lessening such mountain of absconders / proclaimed offenders. All the S.H.Os shall be directed to submit quarterly report to the ILLAQA Magistrate regarding progress towards

matter of absconders/proclaimed offenders.

44. *The report regarding second phase, shall also be submitted to this Court within a period of three months showing progress towards such object. Any further effective addition in first and second phase shall be a mark of appreciation on part of the IG, DIGs and SSPs of Police.*

45. *At this juncture, it is worth to add here that issue of special fund, meant for investigation, be mechanized in a manner so as to eliminate all chances of intervention of third person and such fund should directly reach the Investigation Officer concerned through cross-cheque(s), which surely will make the investigation officer accountable for speedy and effective investigation without an excuse of having no fuel etc. Needless to add that purpose of 'reward' or allocation of funds towards investigation was always to encourage investigating officers to use all means without a fear of spending his own money (salary) in the name of 'duties'. Separate record shall be maintained on police station(s) level, non-compliance shall expose to the contempt proceedings.*

46. *Since, as already discussed particularly with reference to Sections 87 and 88 of the Code, the Court(s) are under heavy obligation(s) to complete process of publication of proclamation (87) and that of attachment (88) within strict meaning, purpose and object of the provisions, which cannot be achieved unless the Court(s) take advantage of available means particularly that of establishment of I.T. Cell at District Level, therefore, the I.T. personnel working at District level should be engaged to:*

** prepare and maintain data of proclaimed offender(s) of Judicial District; maintaining the statistics thereof on daily basis and to present the same before District and Sessions Judge for communication to Sr. Superintendent of Police of that District for progress and report thereof, which, if found unsatisfactory, be communicated to DIGP;*

** Fix all cases kept on dormant file on quarterly basis and call progress report in those matters by directing concerned SHOs.*

47. *It is surfaced that investigation officers in many cases submit report under 'A' class thereby burying the file in dump of files though it is settled principle of law that investigation continues till the crime is unearthed and guilt or innocence is determined by the Court(s) of law, hence in such like matter(s) (reported under 'A' class), the responsibilities of the police do not come to an end by submitting such paper alone nor that of Magistrate concerned who otherwise is ultimate authority and does possess supervisory jurisdiction. Thus, judicial propriety demands that learned Magistrates shall maintain record of such case(s) and shall keep calling report(s) from police station concerned on quarterly basis and matter shall be fixed at such occasion with notice to complainant/victim party to show that what efforts have been taken for completing the investigation which in no way fulfills by submission of a report under 'A' Class. Similarly, the cases, wherein police submits final report/charge sheet by showing all accused as absconders under Section 512, Cr.P.C., shall not be treated as final report; learned Magistrate shall postpone the cognizance in terms of Section 344, Cr.P.C.; while by treating such report as an interim report, shall fix those cases fortnightly for progress report.*

48. *All the District and Sessions Judge(s) are accordingly directed to implement the above directive(s) so that very spirit and object of the*

provision of Sections 87 and 88, Cr.P.C be achieved. Needless to add that all concerned department(s) shall cooperate with DIGP and Court(s) concerned.

35. At this stage, it is also appropriate to refer to the basic procedures prescribed in the **Federal Capital and Sindh Courts Criminal Circulars**. Where a warrant has been issued and the accused has absconded, concealed himself, or cannot be apprehended, the matter shall be recorded in the general criminal calendar and entered in the dormant register. Whilst, the extradition of fugitive offenders who have fled from Pakistan to other States is governed by political and administrative considerations, rather than legislation. Where an offender has fled from a Province of Pakistan to an acceding State, the **Fugitive Offenders Act, 1881**, and the procedures laid down in **paragraphs 65 and 66 of the Political Department Manual** shall be followed for demands of surrender. The relevant provisions have been carefully examined and are reproduced hereunder for ready reference.

CHAPTER VI.

PART A.

PROCEDURE IN INQUIRIES AND TRIALS BY MAGISTRATES.

1. When a complaint whether oral or in writing is made to a Magistrate, he should make the examination of the complainant sufficiently full to satisfy himself whether there are any grounds for proceeding. It shall not be necessary for him to examine the complainant when a complaint in writing is made by a Court or by a public servant acting or purporting to act in the discharge of his official duties, or (b) when a Magistrate empowered under section 192 of the Criminal Procedure Code decides to transfer the complaint to a subordinate Magistrate He should not postpone issue of process and hold a preliminarily inquiry, except for sufficient reasons to be strictly recorded in writing Similarly he must record his reasons for dismissing the complaint under section 203.

2(1) When a complaint is made of a offence which is triable as a warrant case and cannot be lawfully compounded and when the Magistrate taking cognizance of it thinks there is sufficient ground for proceeding with the case, he shall require the complainant to execute a bond to appear before him on a fixed day at a fixed place. If the complainant fails so to appear, the magistrate should proceed against him in accordance with law

(2) If either a complainant, whose evidence is essential in the case and against whom proceedings have been taken under the preceding rule, or an accused person, against whom a warrant has been issued and who has absconded or concealed himself so that such warrant cannot be executed, fails to appear during six

months from the date of attachment of his property or where he has no property in Pakistan to which the provisions of section 88, Criminal Procedure Code, would be applicable, within six months from the date of such report or if an accused person, who is in custody during an enquiry or trial, escapes months from the date of escape be re-arrested notwithstanding the exercise of due diligence on the part of the Court and the police, the Court may order the case of such complainant or accused person to be withdrawn from the general calendar of criminal cases and enter in the dormant register

(3) Cases thus transferred from the general calendar or register shall be accounted for as "disposed of" and shall be so entered in the annual and other returns of business prepared by the Court with a reference in each instance to supplemental list of dormant criminal cases, to which shall be appended all requisite explanation

(4) Cases transferred to the dormant register are not to be considered as finally disposed of, but can be restored to the general calendar or register and again included in the returns of business, whenever the attendance of the absent complainant or accused person is secured.

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II-Extradition to Pakistan.

1. Extradition of fugitive offenders who have fled from Pakistan to other States is a matter governed by political and administrative considerations and not by legislation. If an offender has fled from a province of Pakistan to an acceding State, the extradition is governed by the Fugitive Offenders Act, 1881. The offences committed in Pakistan to which the Act applies are Piracy, Treason, and any offence punishable under the Pakistan Penal Code with rigorous imprisonment for a term of twelve months or more or with any greater punishment (vide section 19 of the Extradition Act, 1903)

2. With a view to assure regularity of procedure in cases where an offender has fled to another province or acceding State, it is directed that the powers of issuing and endorsing warrants and of issuing and endorsing summonses, and the powers generally conferred upon Magistrates by the Fugitive Offenders Act, 1881, should, as a rule, be exercised by the District Magistrate himself, or in cases of necessity by Magistrates of the First Class

3. Evidence should be taken that the person, against whom the warrant is applied for, has absconded, then evidence that an offence has been committed by such person should be faithfully and minutely recorded under section 512 of the Code of Criminal Procedure. If upon such evidence the Court issues a warrant, it should be in the form prescribed by section 75 and directed as required by section 77 of the Code of Criminal Procedure. Evidence should be taken showing clearly that the offence charged is one to which the Fugitive Offenders Act applies, or at least a certificate from the Magistrate should be appended to the warrant, clearly showing

that the offence charged is of that description. All the evidence should be taken, if possible, in the presence of the Police Officer to whom the warrant is addressed, and to whom it is desired that the fugitive offender should be delivered.

4. A copy should be made of every deposition and every documentary exhibit and each copy should contain a declaration signed by the Magistrates as such, that it is a true copy of the deposition taken by himself, or an exhibit produced to him, as the case may be. The whole of the copy of the record thus made should then be entrusted to the Police Officer to whom the warrant is addressed, who will be in a position to authenticate every portion of it when produced by him, in the possession in which the fugitive offender is.

5. When the presence of the Police Officer who is to execute the warrant, cannot be obtained at the proceedings referred to, then each copy must, before being entrusted to the Police Officer, be duly authenticated in the manner provided by section 29 of the Fugitive Offenders Act. Although when the documents can be authenticated by the oath of a witness, in the Possession form which it is desired to procure the delivery of the offender, they need not be authenticated in the manner provided for by section 29 of the Fugitive Offenders Act. It is expedient however that the documents should be authenticated in the manner provided by that section when even it can be conveniently done.

6. If the Police Officer entrusted with the execution of the warrant is unable to identify the accused, he should be accompanied by some person able to identify the accused.

7. The approval of the District Magistrate should be obtained by Subordinate Magistrates when action under the Fugitive Offenders Act, 1881, seems requisite and ordinarily action should be taken only by the District Magistrate himself if this is not feasible, then by a Magistrate of the First Class,

8. In all future applications for the removal of an offender from the Pakistan territory under the Fugitive Offenders Act, 1881 (44 and 45, Vicet. Chapter 69), it must be proved by evidence that the acts with which the accused is charged, amount, under the law in force in the British Possession, from which the applications for his rendition has been received to an offence punishable with 12 months' imprisonment with hard labour or some greater punishment.

9. The most convenient method of complying with these instructions will be to arrange that all applications of the nature in question shall be accompanied by the deposition of a judge, advocate, barrister, solicitor or any official in a position from which the knowledge of law may be presumed, duly authenticated in the manner provided for by section 29 of the Fugitive Offenders Act, and containing the necessary evidence. The course indicated above should ordinarily be followed in future.

10. A deposition should also be taken of the following facts from any person competent to prove them:---

(1) *The statute under which the charge is brought.*

(2) *That such enactment is still in force.*

(3) *That the fact charged if established by evidence constitute the offence dealt with by such statute.*

(4) *That the offence dealt with in such statute is punishable in the territory by some banishment within the terms of section 9 of the Fugitive Offenders Act, 1881*

11. *Extradition from States outside Pakistan is governed generally by treaties with the States concerned. In the cases of the more important States such treaties exist.*

12. *The most common class of cases occurring in the Provinces of Pakistan are those where the offender escapes into an acceding State*

13. *The procedure laid down in paragraphs 65 and 66 of the Political Department Manual should be followed in all cases of demands made to acceding States for the surrender of accused persons. District Magistrates should accordingly, when applying for extradition from acceding States, forward to the Political Agent concerned the evidence establishing a prima-facie case instead of a mere certificate that such a case exists.*

Paragraphs 65 and 66 of the Political Department Manual referred to above read as follows:-

"65. *When a Political Officer receives from a proper authority of a Province requisition for the extradition of a alleged offender supposed to have taken refuge in State territory, he should first see that the requisition is accompanied by prima face evidence recorded on oath by a Magistrate and the alleged offence is one for which extradition may properly be asked, having regard to the principles stated in the preceding paragraphs. If in his opinion both these conditions are satisfied, he should transmit the application and its accompaniments to the Darbar If he find that the prima facie evidence has been omitted or has not been recorded in due form or that the offence is one for which it is not incumbent on the Darbar under treaty or otherwise to grant extradition and in respect of which it would be unbelievable to request surrender as a matter of comity, then he should return the requisition to the authority of that Province with a statement of his reasons for noncompliance*

66. *Application for arrest prior to formal application for extradition.*

When a Political Officer receives from a proper authority of a Province a mere application from arrest accompanied by a Statement of the information on which the request is made, the request should ordinarily be transmitted to the Darbar, the Provincial authority being simultaneously asked to forward at the earliest possible date the formal application for extraditing, accompanied by the usual prima facie case. In the event of undue

delay in the arrival of such formal application Political Officers should bear in mind that the ordinary limit of detention in similar cases in Pakistan is two months [vide section 10 (3) of the Extradition Act, 1903] "

15. *The attention of Magistrates is also drawn to the Government of India Notification No. 1862-1-A of 13th May 1904, Government of India, Foreign and Political Department Notification No 107-1, dated 24th February 1932 as amended, Government of India, Foreign and Political Department, Notification No. 362-1 of 20th July 1925, Government of India, Foreign and Politically Department, Notification No. 718-1 of 16th December 1931, Government of India Notification No 920-1-B, of 1st April 1920 and the memorandum as to Procedure in Extradition cases and cases under the Fugitive defenders Act, 1881 issued by the Government of India in 1932 Printed as an appendix to this volume.*

CHAPTER VI.

PART F-I

PROCEEDINGS AGAINST ABSCONDERS.

1. *Section 87 and 88 of the Code of Criminal Procedure provides for the attachment and sale of the property of any accused person or witness whose presence is required by a Criminal Court as a last remedy for compelling his attendance The procedure laid down must be strictly followed, otherwise the attachment and subsequent sale will be liable to be set aside The proper forms for the proclamation, attachment, &c., to be used in such proceedings are given in Schedule V of the Code*

2. *No proclamation can issue under section 87 unless a warrant has issued in the first instance and the Court has reason to believe that the person against whom it was issued has absconded or is concealing himself so that such warrant cannot be executed. The proclamation must fix a date for the appearance of the person at a specified place and that date must be not less than thirty days from the date of the publication of the proclamation. The proclamation must be published in the manner specified in sub-section (2) of section 87, and the Court should be careful to record the statement as regards the due publication of the proclamation as required by sub-section (3) of the section. The Court has the discretion to issue an order for attachment of property simultaneously with the issue of a proclamation. Section 88 (as amended in 1923) now provides for the summary investigating of claims of objectors to the attachment by Magistrates. The decision of the Magistrate can be challenged by a civil suit within a year.*

3. *If the proclaimed person does not appear within the time specified in the proclamation the property under attachment remains "at the disposal of Government". It can be sold at once at the discretion of the Court when it is liable to speedy decay or if the Court considers that the sale would be for the benefit of the owner. But, otherwise, it cannot be sold until the expiration of six months from the attachment and until the disposal of claims of objectors (if any) by the Magistrate.*

4. In conducting sales, the interest of the absconding person in the attached property which is to be sold should be clearly specified so as to avoid complication in the future.

5.- If the absconder appears or is apprehended and brought before the Court within two years from the date of the attachment of his property and satisfies the Court (1) that he did not abscond or conceal himself for the purpose of evading execution of the warrant, and (2) that he had no such notice of the proclamation as could enable him to attend within the specified time, he can get the property back or its net proceeds if it has been sold less costs incurred (Section 89).

36. It has now come on record that it is the duty of the Court to maintain registers and ensure proper monitoring of dormant files. As observed supra, despite the existence of detailed laws, Standard Operating Procedures (SOPs), and mechanisms developed by various law enforcement agencies, society cannot yet be described as an “abscondence-free zone.”

37. This Court concludes that one of the principal reasons for this situation is the lack of consistent judicial supervision. While matters remain under the active scrutiny of the judicial forum, the processes function effectively and ensure proper compliance with legal and procedural requirements. However, once a matter is consigned to a dormant file or kept in abeyance, no further judicial oversight is exercised, and the responsibility falls entirely upon the executive enforcement agencies. Consequently, in the absence of continual judicial oversight, even well-established mechanisms and resources may fail to achieve the intended objective of apprehending absconders and proclaimed offenders.

38. It has also been observed that in certain cases, where witnesses were not forthcoming, the Courts kept the matter in abeyance for an indefinite period. However, the expression “keeping a Sessions case in abeyance” is not recognized under the Code of Criminal Procedure, nor does the Code provide any mechanism to deal with a situation where the complainant and his witnesses fail to appear despite coercive measures adopted to secure their attendance. The absence of a specific provision to address such a situation should not result in keeping the accused persons in dividing line, without any hope of legal disposal of the charge against them, particularly when the agony suffered by an

accused while facing a criminal charge itself amounts to a form of punishment, though not recognized under Section 53, P.P.C. In this context, reliance is placed upon the case of **Ahmed Saeed Shaikh (SIP) and 3 others versus Muhammad Bukhsh and another (2016 P Cr. L J Note 127)**, wherein it was held that:

The provision of section 249 of the Code permits the Magisterial Court(s) to stop the proceedings and discharge the accused without pronouncement of the judgment of acquittal or conviction. Such power(s) are similar to that of 'keeping case in abeyance'. The stopping of the proceedings, in no way, causes any prejudice to the term 'fair-trial' or 'justice' because such order not only protects the rights of the complainant/prosecution but that of the accused and in no way causes any harm or prejudice to either sides. Though the mechanism, provided under section 249, Cr.P.C. is not provided in Chapter-XXI of the Code but the situation, where complainant and his witnesses do not appear or choose to avoid the process of law, may arise in a Sessions Case. The law, being a dynamic and living organ, has to cope up with every new situation within limination(s) of law and discretion and the technicalities cannot stand in the way of Justice.

12. Thus, where in a Sessions Case the complainant and his witnesses/prosecution do not appear in the witness box despite coercive measures by the courts for procuring their attendance the accused cannot be allowed to suffer indefinitely for a deliberate and intentional act of complainant/prosecution particularly when it is amounting to a kind of punishment. The Court can pass an order, even if not recognized by the Code, if the same does not prejudice the rights of the parties nor harms the legal meaning of 'fair-trial and justice'. This confirms the legal principle that a criminal charge shall require its legal disposal by the competent court in either ways i.e in 'conviction' or 'acquittal', because an accused is always presumed to be innocent hence mere an allegation, unless proved, should not be taken to have caused any effect upon the accused. Thus, even where proceedings are stopped it, in legal terms, causes no prejudice to an accused.

13. Let's to examine whether in such like situation, closing of the prosecution side would be in spirit of law or otherwise. Since the Code does not restrict the complainant/prosecution to complete its side then how the court can do. Further, closing of side in such like situation would mean depriving the complainant/prosecution from his/its right to prove a charge, if at later stage the complainant/prosecution justifies circumstances preventing non--appearance in earlier stage. The Law can permit a deviation from normal provided course/procedure if it causes no prejudices rather serves the purpose of justice, but it (Law) shall not permit an act which may result in one coming forward with a plea of prejudice to his/its right to have fair trial.

14. In view of above discussion, I can safely answer the proposition that keeping a sessions case in abeyance (stopping proceeding thereof without pronouncement of judgment of acquittal or conviction)

cannot be termed as illegal. However, before doing so, the Court shall adopt process, including coercive measures by issuing warrants even, to procure attendance of the complainant or the witnesses as provided under sections 87 and 88, Cr.P.C. as explained in Criminal Circulars and if at the end it is satisfied that there is no probabilities of procuring attendance of the complainant/witnesses in near future then the Court may order for keeping the case in abeyance and small discharge the accused. Albeit the case will, legally, be deemed to be pending but it should not continue harming or prejudicing the discharged/released accused because such order is meant to save the rights of the prosecution/complainant i.e a fair opportunity of hearing against the accused (legally presumed to be an innocent person), therefore, he (accused) would be required to furnish his P.R. bond and bonds of surety, for his appearance if summoned by the trial Court at later stage. Reference can be made to the case of Sardaran Bibi v. State (PLD 1990 Karachi 233) wherein it was held:

4. The word 'release the accused' used in this section are significant. As defined in Aiyer's Manual of Law Terms and Phrases, 7th Edition, the word 'release' means a discharge, a surrender, an extinction. It is a term denoting a variety of meanings. It cannot, therefore, be given a restricted meaning so as to denote only release from custody. This question was also examined by Munawar Ali Khan, J (as he then was) in S. Masood-ul-Hassan Naqvi v. The State reported as 1986 PCr.LJ 1272 who hold as follows:-

"Similarly the stoppage of proceedings under section 249, Cr.P.C. has the effect of discharging the accused until such time when on availability of the requisite evidence the case could be revived against him. I am, therefore, not inclined to endorse the view taken by the learned Sessions Judge. The stoppage of the proceedings amounts to termination of the case for the time being. Since the accused is not required to attend the Court as he stands released from such liability, the liability which extends to accused's regular attendance in the Court also comes to an end. By no stretch of imagination the surety can be held to continue as surety for the accused for an indefinite period which, as pointed out above, may never be ended. In such a case it would be absurd to withhold the return of documents deposited by the surety'.

39. In view of the foregoing, it is held that continuous judicial supervision is essential to ensure the effective implementation of the law and the apprehension of absconding accused. Accordingly, the following necessary measures, in the form of directions, shall be observed:

Firstly, all law enforcement agencies are hereby directed to strictly follow their respective laws, rules, Standard Operating Procedures (SOPs), and established mechanisms in the prevention of crime and the apprehension of accused persons. In particular, where the investigating agency has collected tangible evidence against an accused, immediate action must be

taken to arrest such person without any avoidable delay. All agencies / organizations must, therefore, ensure strict compliance with their prescribed SOPs and rules, as well as coordinate fully with other relevant authorities to secure the presence of absconding or proclaimed offenders.

Secondly, the Secretary, Ministry of Interior, Government of Pakistan, as well as the Secretaries of the Home Departments of the respective Provincial Governments, are directed to ensure that new and advanced methods, technologies, and operational tools are developed and extended to the local police. The local police must be fully facilitated and equipped to enable them to take special and stern measures, on a par with those already employed by other federal and specialized enforcement agencies.

Thirdly, the Magistrate having jurisdiction, as well as the trial Courts where the offence is reported and being tried, and which entertains proceedings under Sections 87 and 88 of the Code of Criminal Procedure, shall ensure strict compliance with the mandatory provisions of these Sections. It is not sufficient for the Court to merely record the statements of police officers who may have visited two localities or taken limited steps. The Courts are under a mandatory obligation to follow the complete procedure prescribed under Sections 87 and 88, Cr.P.C., including the issuance of warrants, affixture at conspicuous places, publication of proclamations, attachment of property, and all ancillary processes, as well as the procedures laid down in the Federal Capital and Sindh Courts Criminal Circulars. Failure to follow the full procedure amounts to a refusal to act in the proper legal manner, resulting in a negligence of judicial supervision.

Fourthly, the Courts where matters are pending shall not consign any case to a dormant file as a routine practice. Instead, such cases shall be actively listed in the cause list at least twice a month. During these hearings, the Court shall carefully examine the entire procedure, mechanism, processes, and methods developed under the law, rules, SOPs, and administrative instructions, as discussed supra. No case shall be placed in a dormant file until the full and proper legal procedure has been adopted, including all steps prescribed by law. Where necessary, the Court may call for the internal mechanism or records of the concerned law enforcement agency and direct strict compliance with the prescribed processes. This ensures that absconding or proclaimed offenders are effectively traced and apprehended, and that the rights of complainants and witnesses are safeguarded.

Fifthly, in the event that a complainant or aggrieved person is not satisfied with the progress of an investigation, the statutory remedies available under Sections 22-A and 22-B of the Code of Criminal Procedure may be invoked. These provisions allow for the transfer of investigation and enable the issuance of directions to the relevant law enforcement authorities to ensure that they do not exceed or neglect their statutory functions and

duties. It is pertinent to note that all police and other enforcement agencies are under a legal obligation to arrest the accused upon collection of tangible evidence. Accordingly, before invoking the extraordinary jurisdiction of this Court, the aggrieved party is required to avail the statutory remedies provided under Sections 22-A and 22-B, Cr.P.C., to ensure that proper procedures are first followed by the competent authorities.

Sixthly, in cases where the investigation has been completed and a challan has been submitted, but the accused have not been arrested, the aggrieved party/complainant be at liberty to file an appropriate application before the Court where the proceedings are pending. The Court shall entertain such applications and shall not dispose of them until it is satisfied that the entire legal process, as provided under the law, rules, Standard Operating Procedures (SOPs), and administrative instructions, has been fully and properly followed by the concerned enforcement agencies.

It is emphasized that failure to comply with the prescribed legal process amounts to an excess or lapse in the performance of statutory functions and duties. Therefore, before approaching this Court under its extraordinary jurisdiction, the aggrieved party must first avail all remedies available under law, ensuring that the concerned authorities and Courts have acted in accordance with the mandated procedures.

Seventhly, all Courts where matters are presently kept in dormant files shall immediately fix such cases for regular hearings. The concerned enforcement agencies are directed to provide, in advance, the relevant Standard Operating Procedures (SOPs) and details of the applicable legal provisions to the Court, to ensure that all lawful measures are available for proper consideration. The Courts shall call for reports from the enforcement agencies at least twice a month and proceed with the matter in accordance with the law. In the event that any legal process has not yet been properly adopted, the Court shall direct strict compliance with the prescribed procedures. The Courts shall continue to monitor such cases actively, issuing notices to the aggrieved party or complainant where necessary, to ensure that justice is effectively and expeditiously administered.

Eighthly, in cases where the prosecution witnesses are not forthcoming and the accused is made to face trial for an indefinite period, the Courts, after adopting all possible measures to procure the attendance of such witnesses, may pass an order of discharge in light of the dictum laid down by this Court in the case of *Ahmed Saeed Shaikh (SIP) and 3 others versus Muhammad Bukhsh and another* (2016 P Cr. L J Note 127).

Lastly, the concerned functionaries shall ensure that, where required, adequate protection is provided to the complainant/aggrieved party as well as to the witnesses, in

accordance with the provisions of the Sindh Witness Protection Act, 2013.

40. This order shall be communicated to all relevant quarters, including the enforcement agencies named in the instant petitions. It shall also be placed before the Ministry of Interior, Government of Pakistan, and the concerned Home Department, Government of Sindh, to initiation of necessary measures. A copy of this order is further forwarded to the Deputy Attorney General, Additional Prosecutor General, and Additional Advocate General for appropriate attention. Additionally, the order shall be circulated through MIT-I of this Court, to all concerned Sessions Judges, Special Judges of Special Courts and Tribunals, as well as the subordinate judiciary, for guidance and to ensure the adoption of proper procedural measures.

41. In view of the foregoing terms, the instant constitutional petitions are hereby disposed of.

JUDGE