

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Miscellaneous Application No.S-48 of 2025

Applicant: Ali Asghar, SHO Pabjo Nawabshah and others,
through Mr. Imran Khan Dahri Advocate

Respondent: The State through Ms. Sana Memon, Assistant
Prosecutor General, along with DSP Ghulam
Murtaza Mirani, DSP/ SDPO City Nawabshah and
Inspector Abdul Rasheed SHO PS Pabjo.

Date of hearing: 10.02.2025

Date of decision: 10.02.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- The Order dated 16.01.2025 passed by the learned 1st Additional Sessions Judge Shaheed Benazirabad has been impugned by the Applicants through this Application under section 561-A Criminal Procedure Code 1898, background whereof begins with an application by Mst. Karima Lohach under section 491 Cr.P.C in the Court of learned 1st Additional Sessions Judge Shaheed Benazirabad, alleging her brother's illegal detention at Police Station (PS), Pabjo at the hands of the Applicants, serving at the said police station.

2. On such application, the learned Sessions Judge appointed learned Civil Judge and Magistrate-11 Daulatpur, who conducted his first raid on Pabjo police station on 12.11.2024, which remained unsuccessful since no one was recovered, and Report in such terms was submitted. On a surprise (second) raid on 15.11.2024 at about 1720 hours by the learned Magistrate on the same police station with the permission of the learned Sessions Judge, although Shahnawaz was not found, however two other persons, 'Mehboob Ali' and 'Hesub Chandio' were found in illegal detention at the said police station and Report dated 16.11.2024 in such terms was submitted by the learned Civil Judge. After hearing and considering the Report, Show Cause Notices to the present Applicants were issued, who appeared and replied to the same, claiming therein that the Applicant No.1 (SHO) was on the casual leave at the time of the raid and that SIP Qurban Ali Kalhoro was the Acting Incharge of the said police station at the relevant time in terms of the leave Order dated 15.11.2024 issued by the concerned SSP.

3. The matter was then referred to SSP Shaheed Benazirabad for conducting enquiry through DSP Nawabshah City/ SDPO and to furnish Report. Consequently, Report dated 24.12.2024 was submitted wherein present applicants, SIP Asghar Ali Ujjan, SHO PS Pabjo; ASI Muhammad Zahoor Solangi of PS Pabjo; and HC Khamiso Khan Bhurt of PS Pabjo were found guilty regarding illegal confinement of the above two persons in the police station.

4. Considering all the above facts, circumstances and the Reports, the present applicants were found guilty during the inquiry and therefore vide the impugned Order dated 16.01.2025, Rs.10,000 were imposed upon each of such officials to be deposited within 15 days. The DIGP Shaheed Benazirabad was also directed to conduct Departmental proceedings against the said officials under information to the Court.

5. Today, the learned AGP has filed comments on behalf of DSP Sub-Division City Nawabshah, Shaheed Benazirabad, which also supports the above version.

6. Heard learned counsels and perused the record with their able assistance. During course of hearing today, to the extent of Applicant No.1 (SHO), learned counsel for the applicants emphasized the same plea that at the relevant time, Applicant No.1 was on casual leave and was not the SHO of PS Pabjo. On this, the learned counsel was confronted with the statement of the said applicant dated 20.12.2024 during Inquiry, wherein he himself has admitted that the charge of the police station was handed over by him to ASI Zahoor Solangi (and not to SIP Qurban Ali Kalhoro). The applicant has further recorded in the Inquiry that since he did not receive copy of the leave Order, therefore he did not handover charge to SIP Qurban Ali Kalhoro. This was also confirmed by the statement of SIP Qurban Ali Kalhoro dated 23.12.2024, who stated that he was posted as SHO Daulatpur and neither charge of PS Pabjo was with him, nor was there any entry in the Roznamcha of PS Pabjo about handing over charge to him, nor did he have any knowledge about the leave Order. When confronted with the above two position, the applicant side was completely silent and had no justification.

7. As for the others, HC Khamiso Khan during Inquiry in his statement dated 23.12.2024, stated that the said two persons were brought by ASI Pehlwan Khan and were handed over to PC Imran Ali Bhatti. Whereas, ASI Muhammad Zahoor Solangi during Inquiry in his statement dated 23.12.2024 stated that the said two persons were brought and handed over to me at the police station by ASI Pehlwan Khan with the instructions that FIR will be lodged

against them for which he will return. Before ASI Pehlwan returned, in the meanwhile, the subject raid was conducted and said two persons were recovered from the police station. Lastly, PC Imran Ali Bhatti in his statement dated 23.12.2024 during Inquiry stated that the said two persons were brought by ASI Pehlwan Khan and were handed over to ASI Muhammad Zahoor Solangi.

8. In '*Khan Muhammad and another v. S.H.O. Police Station Phool Nagar and 2 others*'¹, it was observed by the Supreme Court that Courts are the custodian of personal liberties of persons, hence they must not be led away by statements which are advanced to justify illegal actions, and based whereon, I.G. Police was directed to take departmental action against delinquent police officers.

9. In '*Rana Muhammad Aslam V. Azmat Bashir and Others*'² also, in addition to imposing cost of Rs.25,000 upon the Inspector concerned to compensate the detenu, the Supreme Court also directed Inspector General of Police to proceed against them in accordance with law.

10. In view of the above discussed facts, circumstances, the statements of the delinquent and the Reports, there remains no doubt in the fact that in the present case, the said two persons Mehboob Ali and Hesub Chandio were being detained at the police station Pabjo, without any entry either registered under section 154 Cr.P.C. or in the Station Diary of the said police station, hence without any legal justification. Nothing was brought on record to show that they were involved in any case or any investigation was pending against them.

11. The fact of recovery of two persons under illegal confinement from the same police station (and filing of a *habeas corpus* petition by a sister, Mst. Karima, for recovery of her brother, Shahnawaz from the same police station under the same SHO and his team) clearly points out towards the state of affairs at the said police station, which is being used as a detention center for illegal confinement of those citizens, for whose protection actually the said police station was established. Illegal confinement of a citizen impinges upon his personal liberty and fundamental rights guaranteed under the Constitution of Pakistan, especially when such act is conducted by those who are appointed and duty bound to ensure and protect the life and liberty of the same detainee. The ordeal met by a detainee after his unlawful confinement, turns another leaf

1. 1995 S C M R 1283
2. 2011 SCMR 1420

in the chapter on usurpation of life and liberty in violation of the Constitution of this country. The next two disturbing questions which compels one to ponder would be, (a) if the entire efforts and energies of the entire force in this station is focussed upon bringing citizens for illegal confinement and its follow up nefariousness, who would be looking after the actual duties of nabbing the real culprits and maintaining law and order in the area? and, (b) on whose mercy, the thousands of citizens falling under the territorial jurisdiction of this station have been left up to? One of the factors for the crime graph's upward trend every year could be the reason that the people posted and responsible to control crime, get engaged in irrelevant and even prohibited activities, as in the present case. Lack of implementation of check-and-balance mechanisms allow a free hand to such serious activities without any hindrance or even notice. I would conclude here, with the wisdom of the Honourable Supreme Court in '*Khan Muhammad and another V. S.H.O. Police Station Phool Nagar and 2 Others*'³,

“To overlook the actions which impinge personal liberties, is to encourage such violations of law.”

12. A Division Bench of this Court In '*Mst. Saeeda v. S.S.P., Larkana and 3 others*'⁴, took a very serious note of the illegal confinement of the citizens at police stations in the following words:

“Admittedly, detenus have been detained in wrongful custody by the police for a period of 4/5 days which was a gross violation of fundamental rights as guaranteed by the Constitution of Pakistan, 1973. Suffice it to say, that Police Officer had kept the innocent citizens in lock up of Police Station in unlawful and illegal manner and held two youngsters under unlawful detention for a considerable period of time without producing them before the Court of law and such high handedness and disregard of law could not and must not be condoned or tolerated. Law enforcement agencies should respect the law and rights guaranteed to the citizens under the Constitution. Admittedly, respondent No.3, being a police official took the law into his own hands and rather took away the liberty of two citizens without the process of law therefore, malicious act on the part of the police official cannot be brushed aside.”

3. 1995 S C M R 1283

4. 2013 Y L R 2814

13. For other instances where illegal confinement of citizens has been consistently discouraged by the Courts, reference can be made to, '*Abdul Majid v. S.H.O., Police Station Rohilanwali District Muzaffargarh*'⁵, '*Abdul Qayyum v. S.H.O., Police Station Shalimar, Lahore*'⁶, '*Alamgir v. S.H.O., Model Town, Lahore*'⁷ and '*Muhammad Bakhsh v. S.H.O. and Others*'⁸.

14. In the present case, the learned Sessions Judge took a very lenient view by imposing costs of Rs.10,000/- each, as compared to the cost of Rs.100,000/- which was imposed around 12 years back upon the concerned officer by the Division Bench of this Court in '*Mst. Saeeda v. S.S.P. Larkana and 3 others*' *supra*. Even in the cases discussed at paras 8 and 9 *ibid*, the Supreme Court imposed higher costs of Rs.50,000/- and 25,000/- so as to discourage recurrence of such actions, in addition to referring such matters to the Inspector General Police of the concerned Province.

15. In view of the above discussion, no illegality could be pointed out in the Order passed by the learned Sessions Court, which Order is upheld. A copy of this order shall also be sent to the Inspector General of Police, Sindh, being Head of the Department in the Provincial hierarchy, to look into the matter of illegal confinement of citizens and submit a Report within 30 days, on the actions already taken, and the measures to reform the department on this issue.

16. The Application is therefore dismissed, in the above terms.

J U D G E

5. 1995 P Cr. L J 1209
6. 1993 P Cr. L J 91
7. 1983 P Cr. L J 76
8. 1997 P Cr. L J 121