

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitution Petition No. D- 3050 of 2025.

| DATE | ORDER WITH SIGNATURE OF JUDGES |
|---------------------------|---|
| <u>Fresh Case.</u> | |
| 1) | For Orders on CMA No. 14522/25 (Urgent) |
| 2) | For order on CMA No. 14523/25. (Amendment) |
| 3) | For order on office objection Nos. 1 to 10. |
| 4) | For hearing of main case. |

21.07.2025

Mr. Faique Ali Jagirani, Advocate for Petitioner.

1. Granted.
2. On the last date of hearing, following order was passed:-

“1. Urgency granted.
3. Exemption granted subjected to all just exceptions.
2&4. At the very outset, Petitioner’s Counsel has been confronted as to Prayer Clause 2, whereby, a Criminal Miscellaneous Application No. 327 of 2025 has been dismissed by a learned Single Judge of this Court, whereas no writ can be entertained against the order of a learned Judge of this court. Counsel for the Petitioner needs time to assist the Court and for filing of an amendment application.”

Today, learned Counsel has filed amendment application bearing CMA No. 14524 of 2025 requesting deletion of prayer clause No.2¹. Since notice has not been ordered, the application is allowed and prayer clause No.2 stands deleted.

3-4. Through this Constitutional Petition, the Petitioner has primarily impugned Letter No.58 /MIT-II dated 11.01.2024 issued by the High Court of Sindh through Member Inspection Team-II and addressed to District & Sessions Judge (Karachi-East) in respect of production of under trial prisoners through Video Link. The said Circular reads as under:-

¹ 2. To set aside the order passed by the Honorable High Court in Cr Misc Application No 327/2025 order passed on 07-05-2025 and correction thereon on dated 22-05-2025 which is passed against fair trial and due process.

"Fax No:-021-99203217
Email: mit2shc@sindhhighcourt.gos.pk

Tel:No:-021-99203151-283

THE HIGH COURT OF SINDH AT KARACHI

No.58 /MIT-II

Dated:11.01.2024

To,

Learned District & Sessions Judge,
Karachi-East.

Subject: **PRODUCTION OF UNDER TRIAL PRISONERS THROUGH VIDEO LINK.**

With reference to the subject mentioned above the matter for production of Under Trial Prisoners (UTPs) through Video-Link from Central Prison & Correction Facilities Karachi and all other prisons before the Courts of District Karachi-East was placed before the Hon'ble Chief Justice. Upon perusal of the details, Hon'ble Chief Justice has ordered for production of UTPs through Video Link as provided under rule 670 of the Sindh Prisons & Corrections Service rules, 2019, with further directions to expedite the matter with concerned jail authorities.

You are therefore, requested to ensure compliance of the directives above in letter and spirit. For any assistance, if required in this regard, I.T. Department of this Court as well as Jail Authorities concerned may be contacted with to do the needful.

Sd/-(11.01.2024)
(SADAF KHOKHAR)
MEMBER INSPECTION TEAM-II"

Learned Counsel for the Petitioner submits that prior to these proceedings, the Petitioner had approached the learned Trial Court by way of an application available at Page-39 with a request to issue production order of the Applicant for recording of his statement as he has remained in jail since his arrest. He submits that the said application was dismissed vide Order dated 26.03.2025 by the learned Trial Court on the basis of the impugned Circular; whereas, the said order was further impugned by way of Criminal Miscellaneous Application No. 327 of 2025 (*Muhammad Ahmed v. the State & 2 others*), before this Court which also stands dismissed vide order dated

07.05.2025 and according to him, the said order is also based on the impugned Circular; hence this petition.

Heard learned Counsel for the Petitioner and perused the record. Insofar as, the impugned Circular is concerned, firstly the Petitioner's Counsel has failed to point out any deficiency or illegality in the said Circular, which has been issued on the directions of the the then Chief Justice of this Court in terms of Rule 670 of the Sindh Prisons & Corrections Service Rules, 2019; whereas, even otherwise in view of the dicta laid down by the Honorable Supreme Court in the case of ***Gul Taiz Khan v/s. Registrar Peshawar High Court (PLD 2021 SC 391)***, such orders passed by the Chief Justice of this Court on the administrative side are not subject to review or challenge in writ jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Notwithstanding this, the Rule in question i.e. Rule 670² ibid is not under challenge before us.

Secondly, the appropriate course for the Petitioner was to further impugn the order passed on 07.05.2025 in Criminal Miscellaneous Application No. 327 of 2025 inasmuch as the said order is a judicial order of a learned Judge of this Court, which otherwise cannot be impugned in Constitutional jurisdiction; whereas Petitioner's Counsel was also confronted on the last date of hearing, who has deleted the prayer to that effect. Per settled law, the Court acting under Article 199 can issue direction to any person; however, the definition of person excludes a High Court Judge; and that too exercising jurisdiction under a law. It is not material as to whether such jurisdiction vests in the High Court judge or not; what is relevant is that no writ lies against the High Court judge in the instant matter. The exceptions to this³, if any, are also not attracted in the present case.

² The Prisoners shall be produced before the court through video link trial in the designated place inside the prison under the orders of court.

³ Asghar Ali v The State (1999 SCMR 654)

Moreover, perusal of the same reflects that a reasoned order has been passed, which though mentions the impugned Circular; however, an independent judicial finding has been recorded as to declining the request of the present Petitioner. It would be advantageous to refer to the relevant finding of the learned Single Judge of this Court in its order dated 07.05.2025, which reads as under:-

“2. Heard and record perused minutely. A bare perusal of the impugned order as well as progress report submitted by the learned trial Court reveal that this Court through letter No.58/MIT-II dated 11.01.2024 has issued directions for production of all Under Trial Prisoners (UTPs) through video link as provided under Rule 670 the Sindh Prisons and Corrections Service Rules, 2019. It is noteworthy all the prosecution witnesses have been examined and now the case is fixed for recording statement of applicant /accused under Section 342, Cr.P.C. No doubt, the High Courts in exercise of their rule making powers under Article 202 of the Constitution of the Islamic Republic of Pakistan 1973, on the administrative side. can issue a direction for production of UTPs through video link after due deliberation, if it is found just and proper in the peculiar facts and circumstances of such cases.

3. Considering the facts and circumstances of the case as well as directions of this Court in the letter (supra), I am of the view that the refusal by the learned trial Court for production of applicant/accused for recording his statement under Section 342, Cr.P.C. does not suffer from any illegality or serious infirmity. The impugned order, on the face of it, is just, proper and speaking one. The learned counsel for the applicant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned order, which in my humble is based on fair evaluation of record and within the directions of this Court, hence calls for no interference by this Court in exercise of its Revisional Jurisdiction, scope of which is limited. In view thereof, this Criminal Misc. Application No.327 of 2025 is bereft of any merit stands dismissed.”

Perusal of the aforesaid order of learned Single Judge of this Court, reflects that the learned Judge has passed a reasoned order; and if at all the Petitioner was aggrieved, the appropriate remedy available was to impugn the same further in accordance with law. However, on the contrary, a writ petition has been filed challenging the Circular itself; whereas the Trial Court as well as learned Single Judge of this Court have appreciated the facts and contention of the Petitioner and have, thereafter, passed judicial orders declining the request of the Petitioner.

It may be also of relevance to observe that recently the National Judicial Policy Making Committee in its 53rd meeting held on 11.07.2025 has been pleased to decide that insofar as

production of Under Trial Prisoners through Video Link is concerned, the High Courts are empowered to issue SOPs for attendance of Under Trial Prisoners through Video Link. This Court has already issued various directions to the trial Courts, including the impugned circular for such purposes. At best, an Under Trial Prisoner can approach the trial Court for production in person, and if the trial Court finds that it may not be in the interest of justice to record evidence or any further statement through Video Link, the trial Court can always pass an order for production of the Under Trial Prisoners in person. In the instant matter, this exercise has been carried out and judicial orders have been passed by the trial Court as well as this Court and instead of impugning the said orders any further, this petition has been filed, which does not appear to be maintainable even otherwise.

In view of the above position, this petition being misconceived and not maintainable is hereby dismissed in *limine* with pending applications.

CHIEF JUSTICE

JUDGE