

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

Criminal Misc. Application No S-300 of 2026

Applicant : Babar Khan, through Mr. Meer Ahmed Mangrio, Advocate, along with Mr. Aroon Kumar, Advocate.

Official Respondents : Through Mr. Nazar Muhammad Memon, A.P.G., Sindh along with DSP Nazir Ahmed Complainant Cell Dadu, ASI Aqeel Ahmed PS B-Section Dadu and HC Wazeer Ali PS A-Section Dadu.

Proposed Accused No.1 : Through Mr. Athar Abbas Solangi, Advocate.

Proposed Accused No.2, 4 & 16 : Through Mr. Ghulam Shabbir Mari, Advocate.

Proposed Accused No.3 : Through Mr. Sameeullah Rind, Advocate.

Proposed Accused No.5 & 8 to 11 : Through Mr. Safdar Ali Charan, Advocate.

Inspector Benazir Jamali, Farhan Ali, Tarique Ali, Riaz Hussain, Zulfiqar Ali, Zeeshan Ali, Ali Asghar, Waseem and Shahid also present in person.

Date of Hearing : 24-08-2026

Date of Order : 11-09-2026

ORDER

RIAZAT ALI SAHAR, J: - Through the instant application under Section 561-A Cr.P.C., the applicant has called in question the order dated 13.05.2026 passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Dadu in Criminal Miscellaneous Application No.129/2026, whereby his application under Sections 22-A & 22-B Cr.P.C. seeking registration of an FIR against the proposed accused in respect of the alleged custodial death of his brother, Nadir Jamali, was dismissed. The applicant seeks setting aside of the impugned order and

appropriate directions for registration and investigation of the alleged offences.

2. The record further reflects that, vide order dated 20.04.2026 passed in Criminal Miscellaneous Application No.S-114/2026, this Court had already set aside the earlier order dated 17.02.2026 to the extent of Criminal Miscellaneous Application No.129/2026 and directed the learned Sessions Judge, Dadu, exercising powers as Ex-Officio Justice of Peace, to decide the matter afresh on its own merits, either allowing or rejecting the application, with reasons.

3. The applicant, through instant criminal miscellaneous application has prayed as under:-

- a)** *That direct the Respondent No.1 to immediately record the verbatim statement of the Applicant and register a FIR under the Torture and Custodial Death (Prevention and Punishment) Act, 2022 and relevant sections of the PPC.*
- b)** *Direct the Respondent No.5 National Commission for Human Rights (NCHR) to actively exercise its statutory oversight and monitoring mandates as envisioned under the Torture and Custodial Death (Prevention and Punishment) Act, 2022, to ensure complete transparency, fairness, and independent institutional scrutiny in the instant matter.*
- c)** *That direct Respondent no.2 to initiate departmental inquiry against all the proposed accused/police officials involved in extra judicial killing.*
- d)** *That direct Respondent no.2 to Restrain the proposed accused from causing illegal harassment to the applicant and his family.*
- e)** *That direct the respondent No.3 and 4 to provide proper legal protection to the applicant and his family.*

4. Instant application arises out of the death of Nadir Jamali on 07.01.2026. The applicant alleges that his brother was initially apprehended by police officials at about 07:45–07:50 p.m., subjected to torture and forcibly taken in a police vehicle; thereafter, according to the applicant, he was brought to Police Station B-Section, Dadu and confined there at about 08:10 p.m. The applicant claims that shortly thereafter he received information that Nadir had been killed and that his death was subsequently projected as the result of a police

encounter. FIR No.03/2026 had earlier been registered at Police Station A-Section, Dadu in relation to an alleged encounter dated 06.01.2026. Subsequently, FIR No.05/2026 under Sections 324, 353, etc. PPC and FIR No.06/2026 under the Sindh Arms Act were registered at Police Station B-Section, Dadu concerning the alleged encounter of 07.01.2026 and recovery of a weapon. The applicant's case is that these FIRs represented the police version and were utilized to conceal the alleged illegal detention and **custodial killing** of Nadir Jamali.

5. The applicant principally relied upon the alleged evidence of Qurban Jamali and PC Imdad Jamali, the alleged taking away of the deceased in a police vehicle, the post-mortem record showing receipt of the dead body at 08:55 p.m., and video material produced through USB devices. He contended that the alleged encounter was stated in FIR No.05/2026 to have occurred at about 09:00 p.m., thereby, according to him, creating a material discrepancy concerning the time and manner of death. He further invoked the **Torture and Custodial Death (Prevention and Punishment) Act, 2022**.

6. The record also shows that the matter underwent more than one investigation. Initially, investigation of FIR No.05/2026 was conducted by Inspector Qamruddin Tunio; thereafter, on the direction of the learned Judicial Magistrate, further investigation was entrusted to DSP Sagheer Hussain Mugheri of another district and subsequently to DSP Faraz Ali Maitlo, SDPO Sehwan Sharif, District Jamshoro. The record further reflects that the learned Magistrate passed orders requiring further investigation and that proceedings concerning the FIRs subsequently progressed before the competent Court.

7. An earlier application under Sections 22-A & 22-B Cr.P.C. was kept in abeyance by order dated 17.02.2026 because the applicant had expressed lack of confidence in the local forum and a judicial inquiry was pending. The applicant challenged that order before this Court, and vide order dated 20.04.2026 this Court set aside the order to the extent of Criminal Miscellaneous Application No.129/2026 and directed a fresh decision on merits within one month.

8. Arguments were heard and the matter was reserved for orders. Subsequently, during the course of day, the learned counsel for the applicant submitted a statement, wherein the applicant expressly stated that he did not press the application to the extent of Capt. (R) Ameer Saud Magsi, proposed accused No.1, acknowledging that his implication was based upon his supervisory position as the then SSP, Dadu and that no specific overt act, direct participation, *actus reus* or *mens rea* was attributable to him. Such late diary was maintained. Accordingly, the applicant requested deletion of his name from the array of proposed accused. The statement was stated to have been made voluntarily and without pressure, coercion or undue influence. In consequence, the name of proposed accused No.1 was ordered to be deleted with red ink from the array of proposed accused/respondents.

9. Learned counsel for the applicant has contended that the impugned order is unsustainable because the learned Ex-Officio Justice of Peace entered into an assessment of the merits of the alleged occurrence instead of determining whether the information placed before him disclosed cognizable offences requiring setting of the criminal law into motion. He contended that the applicant was not required to prove the allegations at the stage of registration of an FIR. He further contended that the applicant's version discloses a distinct allegation of illegal apprehension, unlawful custody, torture and custodial death, which cannot be neutralized merely because FIRs concerning the police version of the encounter have already been registered. Learned counsel has contended that an independent investigation is particularly necessary where allegations are directed against police officials themselves. He has also relied upon the alleged discrepancy between the post-mortem timing and the time of the alleged encounter, the alleged video evidence and the assertions regarding the deceased having first been taken into police custody and that these matters require investigation rather than determination through a preliminary adjudication. The applicant, therefore, seeks an independent investigation through FIA under the **Torture and Custodial Death (Prevention and Punishment) Act, 2022**. Learned counsel has further contended that the applicant and his witnesses apprehended harassment from local police officials and that the alleged

failure of witnesses to record statements should not, by itself, defeat the applicant's grievance. The prayer, as emerging from the record, is therefore for setting aside the impugned order and for ensuring a fair, transparent and independent investigation.

10. Learned Additional Prosecutor General, Sindh by placing before this Court the existing police record, statements and material relating to the investigations already conducted contended that as per police version Nadir Jamali, who was wanted in earlier criminal cases, encountered the police party on 07.01.2026, sustained firearm injuries and was thereafter shifted to DHQ Hospital, Dadu, where he was declared dead and FIR Nos.05/2026 (police encounter) and 06/2026 (recovery of pistol) were accordingly registered.

11. At the same time, the State record itself demonstrates that the matter has been the subject of successive investigations and judicial scrutiny, including further investigation by officers from outside District Dadu. The record also contains the material relating to the medical inquiry and the competing positions regarding the time at which the dead body reached the hospital. In these circumstances, the question whether the deceased was in police custody immediately before his death remains a matter capable of objective verification through investigation.

12. Learned counsels for proposed accused persons denied the allegations and relied upon the police record, the successive investigations and the material suggesting that the deceased was not in police custody and died as a result of injuries sustained during the alleged encounter. They also contended that there was no basis for implicating an innocent officer merely because of his supervisory position.

13. It is relevant to note here that in view of the categorical statement made by the applicant whereby he did not press the application against Ameer Saud Magsi and acknowledged absence of specific material attributing any overt act, direct participation, *actus reus* or *mens rea* to him, no adjudication on the merits of the

allegations against proposed accused No.1 is now called for. The proceedings, therefore, stand concluded qua him alone.

14. All proposed accused present before the Court on 24.08.2026, denied the allegations levelled against them and maintained that they had neither unlawfully detained nor tortured the deceased and had no involvement in any alleged custodial killing. Their presence and denial are recorded; however, the truth or otherwise of their respective stands is a matter for investigation and cannot appropriately be finally determined in these proceedings.

15. I have heard learned counsel for the applicant, learned Additional Prosecutor General, learned counsel who appeared for proposed accused persons and have considered the statements of the proposed accused persons present in person. I have also examined the application, the impugned order dated 13.05.2026, the order dated 20.04.2026 passed by this Court in Criminal Miscellaneous Application No.S-114 of 2026, the material concerning the successive investigations, the statements placed on record and the proceedings dated 24.08.2026.

16. The controversy can appropriately be narrowed to one foundational question: whether the material available on record is sufficient to exclude, at the threshold, the possibility that deceased Nadir Jamali was taken into police custody before his death or whether that question requires an independent investigation.

17. The learned Ex-Officio Justice of Peace, while dismissing the earlier application, placed considerable reliance upon the alleged absence of direct statements from the applicant's witnesses, the competing video material, the criminal antecedents of the deceased, the medical inquiry concerning the time of arrival at the hospital and the principle governing a second FIR (Sughra Bibi case). The impugned order ultimately concluded that the applicant had failed to substantiate his allegations through reliable and confidence-inspiring material. In the present proceedings, however, the issue is not whether the applicant has already proved custodial death. Nor is this Court required to determine the guilt or innocence of any proposed accused.

The relevant question is whether the allegations and material placed before the Court disclose circumstances which require the criminal justice machinery to examine, through lawful investigation, the specific allegation that the deceased was apprehended, detained and thereafter killed. The record discloses two materially divergent versions. According to the police version, Nadir Jamali was an armed accused who encountered the police at about 2100 hours, sustained injuries and was thereafter shifted to hospital. According to the applicant, he had already been apprehended, taken away in a police vehicle and detained at Police Station B-Section before his death. These are not merely alternative descriptions of the same established fact; they represent fundamentally different accounts of the deceased's status immediately preceding his death.

18. Significantly, the record also contains competing material regarding the time when the dead body reached the hospital. The applicant relies upon the post-mortem record showing receipt at 08:55 p.m., whereas the inquiry material relied upon by the police side records a later arrival between 09:12 p.m. and 09:20 p.m. and raises allegations of irregularity in the medical record. The existence of such competing material itself demonstrates that the issue is evidentiary and investigative in character. Likewise, the video material cannot safely be treated at this stage as conclusively establishing either version. The learned Ex-Officio Justice of Peace found that the videos relied upon by the applicant did not sufficiently identify the deceased, police officials or place of apprehension, while the applicant disputes that assessment. The proper course, therefore, is not to convert this proceeding into a final forensic determination of the authenticity, identity or evidentiary value of electronic material, but to have such material examined by the competent investigating agency in accordance with law. The criminal antecedents, if any, attributed to the deceased also do not answer the central question. Even if the deceased was wanted in criminal cases or was allegedly involved in armed activities, such circumstances cannot, by themselves, conclusively determine whether he was lawfully dealt with immediately before his death. The competing allegations concerning the occurrence require independent verification on their own evidentiary footing.

Similarly, the fact that earlier investigations were conducted does not, by itself, render further investigation legally or factually meaningless. The record itself demonstrates that successive investigations were ordered by competent authorities and that the learned Judicial Magistrate did not accept the first investigative conclusions without further scrutiny. **The present question concerns a specific allegation of custodial death and the material must therefore be examined with reference to that precise allegation.**

19. As regards the applicant's alleged failure to produce his witnesses before the investigating officers, that circumstance may legitimately be considered by the investigating agency while assessing credibility. It cannot, however, conclusively answer whether the alleged apprehension and custody occurred. The identity, availability and statements of the alleged witnesses, the relevant police movement/roznamcha record, station diary, lock-up record, wireless communications, mobile-location material, CCTV/video material, medical record and other contemporaneous evidence are matters which are capable of objective investigation.

20. The statement of the applicant dated 24.08.2026 requires a separate consequence in respect of SSP Ameer Saud Magsi. Since the applicant has voluntarily abandoned his claim against proposed accused No.1 and expressly acknowledged absence of specific material against him, the application cannot continue against him. For the remaining proposed accused persons, however, the position is different. The applicant has attributed specific acts to various police officials concerning apprehension, transportation, alleged detention and subsequent handling of the deceased. Those allegations have been expressly denied by the proposed accused. Whether the allegations are true, false, exaggerated or otherwise cannot be satisfactorily resolved merely from the pleadings. The question is precisely the kind which requires collection, preservation and assessment of primary evidence. The material before the Court viewed cumulatively rather than in isolation, therefore, discloses a genuine factual controversy concerning the deceased's custody immediately before his death. **The competing versions, the disputed medical timeline, the existence of electronic material, the allegations concerning the place and**

manner of apprehension and the fact that the allegations are directed against police officials together constitute sufficient grounds for an independent investigation. This conclusion does not amount to a finding that custodial death has been established; it merely recognizes that the allegation cannot safely be closed at the threshold.

21. In the circumstances, the FIR bearing crime No.5 of 2026/criminal case presently forming the subject matter of the grievance is to be withdrawn from the file of the learned trial Court and placed before the Zonal Director, FIA, Hyderabad Zone, so that an officer, not below the rank of Assistant Director having unblemished reputation, may be nominated to conduct further investigation under the Torture and Custodial Death (Prevention and Punishment) Act, 2022. The record itself notes this course and requires the investigating officer, if *prima facie* an offence under the said law is made out, to submit the report under Section 173 Cr.P.C. before the competent Sessions Court. The investigation shall be conducted independently and objectively. No observation made herein shall be construed as an expression of opinion regarding the guilt or innocence of any person. The investigating agency shall examine both the applicant's version and the police version, shall associate all relevant witnesses, shall obtain and preserve the original electronic material, shall verify the relevant police record and movements of the concerned officials, shall examine the medical and hospital record and shall consider all other material having a bearing upon the question whether the deceased was in police custody before his death. The proposed accused shall be afforded full opportunity to place their defence material before the investigating officer and shall cooperate with the investigation. The applicant and his witnesses shall likewise cooperate and produce whatever evidence is relied upon by them. The investigation shall not be treated as an exercise intended to validate either version; rather, it shall be directed towards discovering the truth through lawful collection and assessment of evidence.

22. In view of the what has been discussed above, the instant application is **partly allowed** in the following terms:-

- a) The application is dismissed as not pressed qua proposed accused No.1, Capt. (R) Ameer Saud Magsi and his name shall remain deleted from the array of proposed accused/respondents in view of the applicant's statement dated 24.08.2026.
- b) The impugned **order dated 13.05.2026** passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Dadu in Criminal Miscellaneous Application No.129/2026 is **set aside** to the extent of the remaining proposed accused.
- c) The FIR bearing crime No.05 of 2026 of P.S B-Section Dadu/criminal case concerning the death of Nadir Jamali shall be withdrawn from the file of the learned concerned Court and transmitted to the Zonal Director, Federal Investigation Agency (FIA), Hyderabad Zone, who shall nominate a competent officer, either Assistant Director or above, for conducting further investigation in accordance with law, including the provisions of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, insofar as, prima facie, attracted by the facts.
- d) The Investigating Officer shall first record the statement of the applicant/complainant, Babar Khan Jamali, and thereafter proceed with the investigation in accordance with law. No separate or further FIR shall be registered, in view of the settled principle of law enunciated in Sughra Bibi's case, reported as **PLD 2018 Supreme Court 595**. The statement so recorded shall be treated as the information report furnished by the applicant/complainant. The Investigating Officer shall be competent to conduct a thorough investigation, within the four corners of law, against the persons proposed and nominated as accused by the applicant/complainant, Babar Khan, in the instant application. Both aspects fall within the lawful scope of

investigation, subject, of course, to the collection and assessment of evidence in accordance with law.

- e) If, upon investigation, a *prima facie* offence is found to have been committed under the Torture and Custodial Death (Prevention and Punishment) Act, 2022 or any other applicable law, the investigating officer shall proceed strictly in accordance with law and submit the report under Section 173 Cr.P.C. before the competent Court.
- f) The aforesaid exercise shall, as far as practicable, be completed within **thirty (30) days** from the date of receipt of this order, subject to lawful extension if circumstances genuinely so require.
- g) All remaining proposed accused Nos. 2 to 16, namely Sultan Ahmed Chandio, DSP, Qurban Qambrani, SHO A-Section Dadu, Khalil Rehman Massan, SHO B-Section Dadu, Benazir Jamali, Incharge CIA Dadu, Shahid Panhwar, Incharge 15 Dadu, Aijaz Laghari PC 15 Helpline, Farhan Panhwar PC, Tarique Lund PC, Riaz Panhwar PC, Zeeshan Solangi PC, Waseem Solangi PC, Allah Bachayo PC, Zulfiqar Ali Mastoi PC, Driver PC Ali Asghar, Bilawal Domki shall cooperate with the investigating agency and shall not obstruct or influence the investigation. The applicant and his witnesses shall likewise cooperate and make available all material in their possession.
- h) Nothing contained in this order shall be construed as a finding of guilt or innocence against any proposed accused, nor as a final determination that the deceased was or was not in police custody. The said questions shall remain open for determination on the basis of evidence collected during the independent investigation.

23. The instant Criminal Miscellaneous Application stands disposed of in the above terms.

Let a copy of this order be transmitted to the Director General, Federal Investigation Agency (FIA), for strict compliance.

JUDGE

Abdullah Channa/PS