

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.575 of 2025
Criminal Misc. Application No.576 of 2025

1. For Hearing of Case.
2. For Hearing of MA No. 9397/2025.

For the Applicant : Sarim Burney, Through:
Mr. Raj Ali Wahid Kunwar,
Advocate

For the Respondent/State : Ms. Rabia Khalid, Assistant
Attorney General.

Date of hearing : 16.01.2026

Date of Order : 17.02.2026

ORDER

Jan Ali Junejo, J:- Through the instant Criminal Miscellaneous Application No.575 of 2025 filed under Section 561-A, Code of Criminal Procedure, 1898, the Applicant has called in question:

- i. Order dated 28.03.2025 passed by the learned 1st Judicial Magistrate, Karachi East, whereby the application seeking physical production of the Applicant was dismissed; and*
- ii. Order dated 03.07.2025 passed by the learned XIVth Additional Sessions Judge, Karachi East, in Criminal Revision No. 60 of 2025, whereby the said order was maintained.*

In addition thereto, in Cr. Misc. Application No. 576 of 2025, the Applicant has also sought deletion of Sections 3(1)(2), 4 and 5 of the Prevention of Trafficking in Persons Act, 2018 (TIP Act) from the charge and the Applicant called in question:

- i. Order dated 28.03.2025 passed by the learned 1st Judicial Magistrate, Karachi East, whereby the application under Sections 221 & 242 read with Section 265-D Cr.P.C. and not to include Sections 3(1) (2), 4 & 5*

of The Prevention Of Trafficking In Persons Act, 2018 was dismissed; and

- ii. Order dated 03.07.2025 passed by the learned XIVth Additional Sessions Judge, Karachi East, in Criminal Revision No. 59 of 2025, whereby the said order was maintained.*

2. FIR No. 126/2024 was registered at FIA Anti-Human Trafficking Circle (AHTC), Karachi on 05.06.2024 at 09:30 hours on behalf of the State through SI Bilal Ahmed. The FIR records that the case arises out of Enquiry No. 273/2024 initiated on a written complaint received from the Consulate General of the United States of America, Karachi, alleging illegal adoption activities by *M/s Sarim Burney Welfare Trust International*, situated on Main University Road, Block-14, Gulistan-e-Johar, Karachi. According to the complaint reproduced in the FIR, during its visits to the Trust on 19 July and 2 November 2023, the U.S. Embassy immigration team examined cases involving minor girls Jannat and Fatima, whose names were subsequently changed to Zehra and Sarah in the guardianship documents. The Embassy reported discrepancies between affidavits of alleged biological fathers, Muhammad Wasif Shabbir and Muhammad Ayaz Khan, and court proceedings which recorded the children as *abandoned* outside the Trust. Another case involved minor girl Haya Nasir Noorwala, similarly reported as abandoned, contrary to information later attributed to her biological mother, Afsheen Muhammad Ali, who stated that the child had been sold for Rs. 350,000 through intermediaries Madiha and Bushra. The FIR further notes that the Trust allegedly collected USD 3,000 per child from U.S. adoptive families and submitted conflicting "orphan certificates" and "admission certificates" before family courts. The

enquiry concluded that Syed Sarim Ahmed Burney, along with associates Basalat Ali Khan and Humaira Naz, knowingly and wilfully misrepresented facts, used forged or fraudulent documents, misled courts regarding the status of the children, and facilitated the transfer of three minor girls, Baby Zehra Fatima, Baby Sarah Fatima, and Baby Haya Yasir, abroad under the guise of guardianship for wrongful gain. On these allegations, the FIR was registered under Sections 3(1)(2), 4 and 5 of the Prevention of Trafficking in Persons Act, 2018, read with Sections 420, 468, 471 and 109, PPC, against (i) Syed Sarim Ahmed Burney, (ii) Basalat Ali Khan, and (iii) Humaira Naz, with the roles of other persons, including Madiha, Muhammad Wasif Shabbir, and Ayaz Khan, left to be determined during investigation.

3. Learned counsel for the Applicant contended that the production of the Applicant through video link violates Section 353, Cr.P.C., and Article 10-A of the Constitution of the Islamic Republic of Pakistan, as the physical presence of the accused is mandatory at the time of framing of charge and recording of evidence. He argues that video-link proceedings impede effective consultation with counsel, confrontation of witnesses, and meaningful participation in the trial. He argues that Sections 3(1)(2), 4, and 5 of the TIP Act are not attracted, as the essential ingredients of “compelled labour or commercial sex acts” are absent from the prosecution material, rendering the inclusion of these provisions illegal and mala fide. He further argues that the impugned orders are non-speaking and passed without proper application of mind to the facts, law, and

case law cited. On these premises, he prays for setting aside the impugned orders, issuance of a production order, and deletion of the TIP Act provisions from the charge. Lastly, he prays for allowing both the Criminal Miscellaneous Applications. The learned counsel relied upon the case laws: 1983 P.Cr.L.J. 1428; 1993 P.Cr.L.J. 1606; 1998 MLD 209; 2004 YLR 1802; PLD 2005 Supreme Court 408; 2017 MLD 916; PLD 1986 Supreme Court 698; PLD 2019 Islamabad 566; PLD 2008 Karachi 38; 2021 MLD 1725; PLD 2012 Supreme Court 553; PLD 2008 Lahore 218; and 2004 P.Cr.L.J. 925.

4. Conversely, the learned Assistant Attorney General supported the impugned orders and submitted that the production through video link is lawful and permissible under Rule 670 of the Sindh Prisons & Correctional Services Rules, 2019, and administrative directions issued with the approval of the Hon'ble Chief Justice. She argues that no prejudice has been demonstrated by the Applicant, as proceedings are conducted in open court with counsel present. She argues that at the stage of framing of charge, only a prima facie case is required, and the prosecution material sufficiently discloses the commission of offences under the TIP Act. She further argues that an application seeking deletion of penal sections prior to recording of evidence is premature and not maintainable. Lastly, she prays for dismissal of the Criminal Miscellaneous Applications.

5. I have considered the arguments advanced by the learned counsel for the Applicant as well as those of the learned Assistant Attorney General appearing on behalf of the FIA (AHTC), and have perused the material on record. Article 10-A of the Constitution

guarantees the right to a fair trial and due process, while Section 353 of the Cr.P.C. mandates that evidence be recorded in the presence of the accused, subject to lawful exceptions. In light of technological advancements, appearance through video link has been recognized as a permissible mode of participation, provided adequate safeguards are in place. Rule 670 of the Sindh Prisons & Correctional Services Rules, 2019 expressly authorizes the production of under-trial prisoners via video link. In the present case, the Applicant has failed to demonstrate any specific instance of denial of confidential access to counsel or any technical failure that resulted in actual prejudice. Mere generalized apprehensions are insufficient to invoke inherent jurisdiction under Section 561-A, Cr.P.C. However, it is clarified that where the nature of the proceedings so requires, or where technical deficiencies materially affect the fairness of the trial, the learned Trial Court shall retain the discretion to order the physical production of the Applicant at any stage of the trial or proceedings, provided that reasons for such order are recorded if the physical presence of the Applicant becomes essential.

6. The core contention of the Applicant relates to non-applicability of Sections 3, 4 and 5 of the TIP Act. It is argued that the essential ingredients of “compelled labour or commercial sex acts” are absent. This Court observes that the learned Trial Court, being the fact-finding Court, after considering the material collected during investigation, has already formed a prima facie opinion that sufficient grounds exist for framing charges under the said provisions. As the present application has been filed under Sections

221 and 242 of the Code of Criminal Procedure, 1898, it is expedient to examine and reproduce the relevant provisions as follows:

“221. Charge to state offence.— (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) Specific name of offence sufficient description. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) How stated where offence has no specific name. If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) What implied in charge. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) Language of charge. The charge shall be written either in English or in the language of the Court.

(7) Previous conviction when to be set out. If the accused having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted the Court may add it at any time before sentence is passed”.

“242. Charge to be framed. When the accused appears or is brought before the Magistrate, a formal charge shall be framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged”.

A bare perusal of the aforesaid provisions demonstrates that Section 221 of the Criminal Procedure Code, 1898, governs the form and sufficiency of the charge in a criminal trial. It requires that every charge clearly state the offence with which the accused is charged,

specify the law or section under which the offence is alleged to have been committed, and provide sufficient particulars of the act, including time, place, and circumstances, so that the accused is fully informed of the case he has to meet. The charge must be in a language understood by the accused or the Court. The primary purpose of this provision is to ensure procedural fairness and safeguard the accused's right to a fair trial by giving clear notice of the allegations. It is a well-settled principle of law that failure to comply with Section 221 by presenting a vague or incomplete charge constitutes a material irregularity, which can render the trial void, as it prejudices the accused's ability to prepare an effective defence. Section 242 of the Code, 1898, however, deals with the framing of the charge by the Magisterial Court. At the stage of framing the charge, a detailed appreciation of evidence is neither permissible nor required. The record reflects that the learned Trial Court correctly exercised its judicial discretion while dismissing the application under Sections 221 and 242, Cr.P.C., read with Section 265-D, Cr.P.C., having regard to the material available on record. Section 221 of the Cr.P.C. governs the form and sufficiency of the charge, ensuring that the accused is adequately informed of the allegations, while Section 242 deals with the framing of charge, which requires only a prima facie consideration of the evidence. Accordingly, the present Criminal Miscellaneous Application seeking deletion of these provisions is not maintainable. However, the learned Trial Court remains at liberty to amend or alter the charge after recording the evidence of material witnesses if the facts so warrant. The inherent jurisdiction of this Court under Section 561-A, Cr.P.C., is to

be exercised sparingly and only in cases where a clear abuse of process or miscarriage of justice is apparent on the face of the record. No such exceptional circumstance exists in the instant case. Furthermore, the case laws relied upon by the learned counsel for the Applicant are clearly distinguishable from the facts and circumstances of the present matter.

7. It is a settled principle of criminal jurisprudence that the right to a fair trial is a cornerstone of justice and must be scrupulously protected at every stage of the proceedings. To ensure compliance with Article 10-A of the Constitution, and in recognition that the right to a fair trial is one of the most important and fundamental aspects of criminal jurisprudence, the learned Trial Court shall ensure that: i. The identity of the Applicant is verified at each hearing; ii. Audio-visual connectivity is stable, uninterrupted, and effective; iii. The accused can clearly see and hear the proceedings at all times; iv. Adequate facilities are provided for confidential consultation between the accused and counsel; and v. Any document or material presented to witnesses is simultaneously made available to the defence. These safeguards are essential to uphold the core principles of criminal justice, ensuring that the accused is able to fully understand, participate in, and respond to the proceedings. Proper implementation of these measures guarantees that video-link proceedings do not prejudice the Applicant and preserves the integrity of the trial, reflecting that the fair trial of the accused is a vital and indispensable limb of criminal jurisprudence.

8. For the foregoing reasons, both Criminal Miscellaneous Applications filed on behalf of the Applicant, being devoid of merits, are hereby dismissed. The impugned orders passed by the learned Trial Court and the learned Revisional Court do not suffer from any illegality or material irregularity. Consequently, all the impugned orders, having been passed after due consideration and for valid reasons, are hereby upheld. In view of the above observations, the pending Criminal Miscellaneous Applications are also disposed of accordingly.

JUDGE