

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D- 5428 of 2025

**PRESENT: Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro**

Petitioner, Abid Shah : through Mr. Aamir Mansoob
S/o Syed Akbar shah Qureshi, Advocate

Respondent No. 10, Muhammad : through Mr. Muhammad ,
Ramzan Jibran Nasir, Advocate

Respondents No.1 to 9 : Ms. Shazia Hanjra, DAG,
M/s. Hakim Ali Shaikh, Addl.
AG & Sagheer Ahmed Abbasi
Asstt. AG, Mr. Faheem
Hussain, DPG Sindh and
Ashraf Jan, ACC, FIA.

Date of hearing : 31.03.2026

Date of Judgment : 08.04.2026

ORDER

Nisar Ahmed Bhanbhro, J.- Through this petition, the petitioner has claimed the following relief:-

"(a) Declare that FIR No. 33/2025 dated 01.11.2025 registered under section 8, 9 of The Torture and Custodial Death (Prevention and Punishment) Act 2022 at Police Station FIA ACC, Karachi and all proceedings emanating therefrom, are illegal, unlawful, without authority, and is in violation, well settled principle and judgment of the Hon'ble Supreme Court of Pakistan in the landmark case of Mst. Sughran Bibi Vs The State (PLD 2018 Supreme Court 595).

(b) Declare that the investigation carried out by the Respondent No. 8, in respect of FIR No. 33/2025 Under Section 8, 9 of The Torture and Custodial Death (Prevention and Punishment) Act 2022 at Police Station FIA ACC, Karachi and continue investigation in initial FIR No. 443/2025, lodged at Police Station Saddar Karachi in terms of Section 5 of the Act.

(c) Suspend the operation of FIR bearing No.33/2025 under section 8, 9 of The Torture and Custodial Death (Prevention and Punishment) Act 2022 at Police Station FIA ACC, Karachi during the pendency of this Petition.

(d) Restrain the Respondents, their subordinates, agents, and any other person acting under their instructions from taking any coercive measures against the Petitioner in pursuance of the impugned FIR No. 33/2025;

(e) Cost of the petition.

f) Grant any other relief(s) deemed just and proper in the circumstances of the case."

2. Mr. Aamir Mansoob Qureshi, learned counsel for the petitioner, has contended that the petitioner was an accused in FIR No. 443 of 2025, registered under Sections 319/34 PPC at PS Saddar, Karachi. He further submitted that, pursuant to the aforesaid FIR, the petitioner was arrested and produced before the Court of Learned Vith Judicial Magistrate (South), Karachi (Trial Court), wherein the learned Court granted five days' judicial custody/remand of the petitioner and directed the investigation of the case be transferred to the Federal Investigation Agency (FIA), as the matter involved the death of a person, namely Muhammad Irfan s/o Muhammad Ramzan, in police custody and fell within the purview of the Torture and Custodial Death (Prevention and Punishment) Act, 2022 (**hereinafter referred to as "the Act, 2022"**). He further contended that, upon transfer of the investigation, FIA registered another FIR bearing No. 33 of 2025, which was not tenable under the law, as FIA is entrusted with the responsibility to investigate cases of torture and custodial death and, as such, was not competent to register a fresh FIR. He also contended that the second FIR was not legally sustainable in view of the law laid down by the Hon'ble Supreme Court of Pakistan in the landmark judgment of *Sughra Bibi v. The State (PLD 2018 SC 595)*. He,

therefore, prayed for the cancellation of the second FIR No. 33 of 2025 registered at PS FIA, Karachi.

3. Mr. Muhammad Jibran Nasir, learned counsel for Respondent No. 10, contended that the petitioner is an accused in a case involving the torture and custodial death of Muhammad Irfan, son of Muhammad Ramzan, who died while in custody of SIU/CIA Police, which falls within the jurisdiction of PS Saddar, Karachi. He further submitted that, although the FIR of the incident was recorded by Inspector Mumtaz Ahmed, however the correct and complete details of incident were not incorporated therein. He next contended that the Act, 2022 is a special law; therefore, the FIA was competent to register the FIR. He, therefore, prayed for dismissal of the petition.

4. The learned DAG, assisted by the Additional Advocate General, Sindh, contended that the FIA correctly assumed jurisdiction and registered the FIR. They referred to the FIA Schedule under the Act of 1974 and submitted that, upon transfer of the FIR from one police station to another, the offence registered at the original police station shall be deemed to have been canceled as envisaged under Rule 25.7 of Police Rules 1934; thus, FIR No. 443 of 2025 stood canceled by operation of law/rules. Therefore, FIR lodged by FIA held the field and prayed for dismissal of the instant petition.

5. Heard arguments, perused the material made available before us on record.

6. The controversy involved in the present petition pertains to the registration of FIRs by the local police and the FIA separately in respect of the same incident. It transpires from the record that one Irfan, son of Muhammad Ramzan, died in police custody on 22.10.2025, for which FIR No. 443 of 2025 was registered under Sections 319/34 PPC at PS Saddar, Karachi. The accused, namely Abid Shah and ASI Sarfaraz, were found involved in the case. They were arrested by the local police and produced before Trial Court for grant of physical remand under police custody. The learned trial Court while granting Five days' remand of the Petitioner, directed the local police to transfer the investigation of the case to the FIA, as the matter fell exclusively within the domain of the FIA for investigation in terms of the Act, 2022. For the sake of convenience operative part of the order dated 28.10.2025 is reproduced herein below:-

“From the perusal of record, the additional note so put by the learned ADPP for State seems cogent as the matter involves the death of a person while in custody of police due to alleged torture whereas under said Torture and Custodial Death Act, 2022, the matter requires to be investigated by the FIA in accordance with law. In view of the above circumstances, I.O. is hereby granted five days police custody remand of accused persons with direction to FIA to take custody of accused for further investigation into the matter and produce the accused before the concern Court having jurisdiction on 02-11-2025 accordingly. PJ Sajid is directed to comply with the directions and do the needful as required under section 5 (ii) of Torture and Custodial Death Act, 2022.”

7. It transpired from record that upon transfer of the investigation, FIR No. 33 of 2025 under Sections 8 and 9 of the Act, 2022 was registered separately at FIA Police Station Karachi on 01.11.2025 in respect of the same incident. It is pertinent to mention that, in the opening paragraph, complainant, Sajid Ahmed, stated that the aforesaid FIR was lodged on the directions of learned trial Court; however, record did not evidence that such directions for registration of another FIR for the same incident were ever issued.

8. The provisions of the Act, 2022, did not provide for registration of an FIR with FIA Police Station. This special piece of legislation granted exclusive jurisdiction and powers of the investigation of offences relating to torture, inhuman, cruel, and degrading treatment under Section 5 of the Act, 2022, which reads as follows:-

“5. Investigation of offences.- (1) Notwithstanding anything contained in any other law for the time being in force, the Agency shall have the exclusive jurisdiction to investigate the complaints against any public officials have committed offence under this Act: Provided that the Agency shall investigate the complaints under the supervision of National Commission for Human Rights;

(2) If at any time, including during the grant of physical remand the Magistrate has reasonable grounds to believe that the offence under this Act is committed or a complaint of torture is lodged by the person in custody, he shall order a medical examination and if

the results of such examination reveal infliction of torture, he shall notify the Agency to investigate such offence.

(3) The Agency, while investigating the offences under this Act, shall have the same powers and shall follow the same procedure as prescribed in the Federal Investigation Agency Act, 1974 (Act VIII of 1975) and the rules made thereunder.

9. Section 6 of the Act, 2022 provides that offences under the said Act are exclusively triable by the Courts of Sessions. Whereas Sections 8 and 9 provided for the same punishment as those of the provisions of Pakistan Penal Code. Sections 6, 8 and 9 of the Act, 2022, read as under:-

“6. Trial of Offences: (1) Notwithstanding anything contained in any other law for the time being in force, the Court of Sessions shall have exclusive jurisdiction to try offences under this Act.

(2) No adjournment shall be granted during the Trial save for the interest of justice, provided if such an adjournment is granted it shall not be more than thirty days.

(3) 8. Punishment for torture. Any public official who commits or abets or conspires to commit torture shall be punished with the same punishment as prescribed for the type of harm provided in Chapter XVI of the Pakistan Penal Code.

9. Punishment for custodial death. Whoever commits or abets or conspires to commit the offence of custodial death, shall be punished with the same punishment as prescribed in section 302 of the Pakistan Penal Code.”

10. From the perusal of above provisions of law it is crystal clear that the ordinary Court of Sessions has the jurisdiction to try the offences under the Act, 2022. The law requires speedy investigation and trial in the cases under the Act, 2022. The investigation in the cases shall be completed within thirty days and trial shall complete within three weeks from the date of submission of challan as envisaged under Section 13 which reads as under:-

“13. Time limit for investigation, trial and appeal.-

(1) The investigation of the offences under this Act shall be completed within thirty days from the date of submission of the complaint.

(2) If the investigation of an offence under this Act is not completed within thirty days, the Agency shall call for a report for explaining the delay in completion of the investigation and if satisfied with the causes of delay, may grant maximum five days for completion of the investigation or if the Agency is not satisfied with the causes of delay, may transfer the investigation to another investigating officer who shall take up and complete the investigation on the same stage where it was left by his predecessor.

(3) If investigation of an offence is not completed within thirty days, the Agency shall also file an interim report before the Court of Session and the court may decide to initiate the trial on the basis of such information.

(4) The trial of offences under this Act shall be completed within three weeks from the date of submission of challan before the relevant court.

(5) The appeal against the offences under this Act shall be decided within thirty days from the date of filing of such appeal."

11. The Act, 2022 did not articulate that the FIA shall be deemed to be a police station for the purposes of registration of an FIR in the cases of custodial torture and death. The Act, 2022 conferred exclusive jurisdiction upon FIA only to investigate the offences; however, FIRs in respect of such incidents shall be registered at local police station. The FIA has been vested with jurisdiction to conduct inquiries, investigations, and to register FIRs only in matters falling within the FIA Schedule under the Act of 1974 and Rules framed thereunder. It may be observed that the Act, 2022 has not been inserted in the Schedule under the Act of 1974 to infer that FIR in the offences shall be registered at FIA Police Station.

12. Contention of Learned DAG and AAG that FIR recorded at local police in the instant case ought to have been transferred and canceled under Rule 25.7 of Police Rules 1934 is not correct. Rule 25.7 of Police Rules provides for transferring an FIR to another police station, when FIR of the incident was lodged at one police station but incident had occurred in the premises of another police station. In the said eventuality, Superintendent of Police shall

cancel the FIR registered at First Police Station and FIR shall be submitted to the police station where incident occurred. Rule 25.7 reads as under:

“25.7: Cancellation of a case in one police station and registration in another: When a case is transferred from one police station to another, the offence registered in the original police station shall be canceled by the Superintendent and a First Information Report shall be submitted from the police station in the jurisdiction of which the case occurred.”

13. Since in the instant case, the FIR had already been registered with the local police, therefore, the recording of a second FIR at FIA Police Station was not tenable under the law. The role of the FIA under the Act, 2022 was limited to conduct investigation in the matter. The contention of learned counsel for Respondent No. 10, that the contents of the FIR recorded by local police did not reflect the true facts of the incident, therefore, a fresh FIR ought to have been recorded are not correct. No doubt the FIR of the incident was recorded for an offence punishable under section 319 PPC, but it will not even justify the registration of another FIR. The offence of Custodial Death is punishable under section 9 of the Act, 2022, which laid down that offence of the Custodial Death shall be punished with the same punishment as prescribed in section 302 of the Pakistan Penal Code.

14. Court takes cognizance of a criminal case on a police report under section 173 CrPC but not on the basis of information recorded in FIR. If during investigation it surfaced that proper section carrying the punishment of offence was not applied in FIR, then it was the prerogative of the Investigation Officer to insert the relevant penal provision of PPC in the charge sheet. The very purpose of an investigation of a criminal case is to sift the grain from chaff. Investigation takes its course on registration of FIR, wherein the investigating agency collects material to depict the true picture of the alleged incident. During the course of the investigation, if the Investigating Officer finds that the complainant or witnesses mentioned in the FIR were also involved in the commission of the offence, they may be arrayed as accused and referred for trial before the concerned Court through a report under Section 173 Cr.P.C.

15. The grievance if any of the legal heirs of the deceased, Muhammad Irfan, regarding an incorrect FIR shall be redressed during the course of the

investigation, wherein they shall be afforded an opportunity to produce such evidence as they may desire, and the Investigating Officer shall be under an obligation to record such evidence and form it the part of prosecution case.

16. FIA was not declared a police station under the Act, 2022 to record an FIR, therefore cannot record an FIR of the custodial death. FIR of the incident shall be recorded at a local police station. The legislation in its wisdom has entrusted the investigation of custodial deaths to FIA, to provide for a neutral avenue for investigation of the cases. The entrustment of investigation of cases pertaining to custodial torture and killings to FIA through special enactment was in consonance and equated the powers conferred to incharge of Police Station under section 156 of the Code of Criminal Procedure.

17. For the foregoing reasons, this petition is allowed. FIR No. 33 of 2025, registered at PS FIA, Karachi, is declared to be illegal and is hereby quashed. The FIA shall, however, investigate FIR No. 443 of 2025 under Sections 319/34 PPC, lodged at PS Saddar, Karachi, strictly in accordance with law and shall submit its report before the trial Court within the stipulated time.

J U D G E

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HEAD OF CONST. BENCHES

Approved for reporting