

THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Cr. Misc. Application No. S-179 of 2026

Applicant : Daya Ram Das @ Diyalu through Mr. Aiman Ali Memon, Advocate.

Respondents : The State through Mr. Neel Parkash, Deputy Prosecutor General Sindh

ASP Qurat-ul-Ain and others through Mr. Abdul Hafeez Mari and Mr. Dalel Khan Mari, Advocate.

Date of Hearing : 02.09.2026

Date of Judgment : 07.09.2026

ORDER

Muhammad Humayon Khan, J.: The Applicant has challenged the Order dated 22.05.2026 of the learned Judicial Magistrate/ Consumer Protection Judge, Mirpurkhas, in Criminal Case No. nil of 2026 whereby his complaint regarding custodial torture was transmitted to the learned Sessions Court on the with the observation that the offences under the Torture and Custodial Death (Prevention and Punishment) Act, 2022 are triable by the Court of Session.

2. Briefly stated, the background of the instant matter is that on 04.05.2026 at about 08:00 p.m., the Applicant, Daya Ram Das @ Diyalu, was allegedly present along with his three-year-old daughter at his brother's pan shop situated at Khipro Stand Naka, near Delhi Biryani, Mirpurkhas, when police officials Roshan Jarwar and Imam Bux Narejo, stated to be serving in the squad of ASP Qurat-ul-Ain, arrived in civilian clothes and allegedly picked him up without showing any warrant or lawful authority. It is alleged that Abid Narejo and Ashique Panhwar also reached the spot, whereupon the Applicant was assaulted, an amount of Rs. 75,000/- was taken from him and his mobile phone was snatched.

3. The Applicant was thereafter allegedly taken before ASP Qurat-ul-Ain, who was stated to be waiting nearby in a police mobile, and was subsequently shifted to P.S. Mehran, where, according to him, he was subjected to further physical torture by

the Respondent police officials, including Rashid PSO, Khadim Arain and others, allegedly in the presence and under the supervision of ASP Qurat-ul-Ain. The Applicant further alleges that during such detention he was pressurised to make a false confession connecting himself with Inayat Zardari and Danish Bhatti, was subjected to demands for illegal gratification and was threatened with implication in a narcotics/charas or arms case.

4. Thereafter, the Applicant was booked in Crime No.47/2026 of P.S. Mehran under Sections 4 and 8 of the Sindh Prevention and Control of Gutka and Mainpuri Act, 2019. When the Applicant was produced before the learned Magistrate for further remand, he complained of custodial torture, whereupon, vide order dated 05.05.2026, the learned Magistrate directed that he be produced before the Civil Surgeon/Medical Superintendent, Civil Hospital, Mirpurkhas, for medical examination and treatment. Pursuant thereto, the Applicant was medically examined and a provisional medico-legal certificate was issued recording multiple bruises/injuries on different parts of his body.

5. Subsequently, on 19.05.2026, the Applicant instituted a complaint under Section 5(2) of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, seeking notification to the competent Agency/Federal Investigation Agency for investigation into the alleged custodial torture. The learned Judicial Magistrate then passed his impugned Order and which is now challenged in this application under section 561-A of the CrPC.

6. Mr. Aiman Ali Memon, learned counsel for the Applicant, contended that the impugned order is contrary to the mandatory scheme of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, as the learned Magistrate, despite the Applicant's specific complaint of custodial torture being prima facie supported by medical evidence, failed to act in terms of Section 5(2) of the Act by notifying the competent Agency for investigation. He argued that the learned Magistrate conflated investigation under Section 5 with trial under Section 6 and merely transmitted the complaint to the Court of Sessions; therefore, the impugned order is liable to be set aside.

7. Conversely, Mr. Abdul Hafeez Mari, learned counsel for Respondents No.2 to 7, opposed the application and supported the impugned order, contending that no illegality or jurisdictional defect has been committed by the learned Magistrate in transmitting the matter to the competent Court of Sessions. Mr. Neel Parkash, learned D.P.G., adopted the submissions advanced on behalf of the Respondents and likewise supported the impugned order, praying for dismissal of the instant application.

8. In view of the controversy involved, the following question arises for determination:

Whether the learned Magistrate, upon receiving a complaint alleging custodial torture under Section 5(2) of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, was required to notify the competent Agency for investigation in accordance with the statutory mechanism prescribed thereunder, instead of transmitting the complaint to the Court of Sessions on the ground that the offence is exclusively triable by that Court?

9. The point must be answered in the affirmative. The prohibition against torture is not merely procedural. It is rooted in Articles 4, 9 and 14 of the Constitution, which protect treatment in accordance with law, life and dignity. In *Khalid Mehmood and others v District Police Officer, D.G. Khan and others* PLD 2026 SC 205, the Honourable Supreme Court reiterated the State's positive duty to protect persons in custody and stressed effective, independent oversight of allegations against law-enforcement officials. Earlier, in *Mohtarma Benazir Bhutto v President of Pakistan* (PLD 1998 SC 388), it was held that an extra-judicial or custodial killing cannot be justified even by the alleged criminality of the victim; and in *Suo Motu Case No. 10 of 2011 (Brutal Killing of a Young Man by Rangers)* PLD 2011 SC 799, accountability through an independent and impartial process was treated as an incident of the right to life. These principles supply the constitutional setting in which the Act of 2022 must be applied.

10. Section 5(1) of the Torture and Custodial Death (Prevention and Punishment) Act, 2022 begins with a non-obstante clause and

confers upon the Federal Investigation Agency ('the Agency') exclusive jurisdiction to investigate complaints against public officials under the Act, subject to supervision by the National Commission for Human Rights. Section 5(2) then imposes two linked duties upon a Magistrate. Where, including at the stage of remand, there are reasonable grounds to believe that an offence has been committed or a person in custody makes a complaint of torture, the Magistrate *shall* order a medical examination; if the result reveals infliction of torture, the Magistrate *shall* notify the Agency to investigate. The word used in both limbs is “shall”. The statutory definition of custody is broad, while the definition of torture expressly includes severe physical pain intentionally inflicted to obtain information or a confession, or for punishment, intimidation or coercion, by or with the involvement of a public official.

11. The special enactment therefore separates three functions: the Magistrate identifies the statutory trigger and secures medico-legal material; the Agency investigates under section 5; and the Court of Session tries the offence under section 6. Section 13 confirms that sequence by fixing time for the Agency's investigation and requiring its report, including an interim report in case of delay, to be submitted to the Court of Session. Section 16 gives the Act overriding effect, while section 17 applies the Code of Criminal Procedure, 1898 only to matters not inconsistent with the Act. The same architecture was explained in *Mst. Sarriya Bibi v Regional Police Officer, Sheikhupura and others* PLJ 2024 Lahore 789, *Zubaida Qureshi v Ex-officio Justice of Peace and others* (2024 LHC 3636; unreported), and *Aftab Mehmood v The State and others* (2025 LHC 5084; also unreported). Those cases recognise the Act as a special law and the Agency as the exclusive investigating forum. *Aftab Mehmood* also specifically notices the Magistrate's mandatory duty under section 5(2).

12. The Torture and Custodial Death (Prevention and Punishment) Rules, 2025, notified through S.R.O. 2180(I)/2025, now provide the operational route. Rule 3 establishes the Custodial Death and Torture Investigation Unit in the Agency. Under rules 5 and 6, a complaint received under section 5 is placed before the Unit, which may entrust a preliminary inquiry to a nominated

Agency officer. Rule 7 requires a prompt preliminary inquiry where credible information of custodial torture is received; if reasonable grounds emerge, the matter is referred to the Agency for further investigation, and the preliminary inquiry is to be concluded within fifteen days with a report to the Director-General. Rule 8 permits closure of a false, frivolous or unsupported complaint. Notification to the Agency thus commences a structured statutory process; it neither records guilt nor dispenses with scrutiny.

13. This interpretation accords with the settled rule that where a statute requires an act to be performed by a specified authority and in a specified manner, it must be performed in that manner alone. Reference may be made to *Zia-ur-Rehman v Syed Ahmed Hussain and others* 2014 SCMR 1015, *Mustafa Impex, Karachi and others v Government of Pakistan and others* PLD 2016 SC 808, *Collector of Sales Tax, Gujranwala v Messrs Super Asia Mohammad Din and Sons* 2017 SCMR 1427, and *Jeehand v The State through Prosecutor General Balochistan* 2025 SCMR 923. A direct transmission of the complaint to the Court of Session may identify the eventual trial forum, but it cannot replace the investigation exclusively assigned to the Agency or the screening and inquiry mechanism subsequently prescribed by the Rules of 2025.

14. The Sindh High Court has applied the same statutory command in closely comparable circumstances. In *Muhammad Ali v Province of Sindh and others* (2026 SHC KHI 621; unreported), it was held that where the medical report indicates torture, the Magistrate is required to inform the Agency under section 5(2). In *Ghulam Shabbir Dalwani v Federation of Pakistan and others* (C.P. No. D-2066 of 2025, unreported Judgment dated 08.12.2025), the combination of a complaint and medical signs was treated as the trigger for the Agency's jurisdiction. *Mst. Rani Khatoon v Province of Sindh and others* (C.P. No. D-202 of 2026; unreported Judgment dated 01.04.2026) likewise emphasised the non-obstante clause, the neutral federal forum and the timetable in section 13.

15. The distinction between investigation and trial has also been expressly maintained in *Abid Shah's case* (2026 SHC KHI 708; unreported). Section 5 assigns investigation to the Agency, whereas

section 6 identifies the Court of Session as the trial court, and section 13 connects the two in that order. In *Mashooq Ali v Muhammad Dawood and others* (Criminal Miscellaneous Application No. 990 of 2025; unreported Judgment dated 04.05.2026), a referral to the Agency was upheld where an independent inquiry into an alleged custodial death was required. *Tarique Hussain and others v Zahid Ali and others* (Criminal Miscellaneous Application No. S-416 of 2025; unreported Judgment dated 22.06.2026), relied upon the need first to invoke the special statutory mechanism. That case is however distinguishable. Here the Applicant complained while on remand, the Magistrate ordered his medical examination and a formal complaint under section 5(2) followed.

16. Applied to the present record, the Applicant complained before the remand Magistrate on 05.05.2026. The Magistrate considered the complaint sufficient to order an immediate medical examination. The provisional medico-legal certificate recorded multiple bruises and injuries contemporaneous with the alleged custody. For the limited threshold under section 5(2), that material prima facie reveals physical injury consistent with the complaint and required notification to the Agency. Whether the injuries were caused in custody, whether they amount to torture as statutorily defined, and whether any named official is responsible are matters for inquiry, investigation and, if warranted, trial. Nothing stated herein is a finding on those issues.

17. The learned Magistrate was correct only to the extent that the Court of Session possesses exclusive trial jurisdiction under section 6. The error lay in treating that provision as authority to bypass section 5(2). The two provisions are complementary, not competing. Transmission of an uninvestigated complaint to the Sessions Court left the exclusive investigating authority unnotified, deprived the statutory Unit of its role under the Rules of 2025, and reversed the sequence commanded by section 13. The impugned order therefore suffers from a material illegality and cannot be sustained.

18. The application under section 561-A of the CrPC is maintainable because the challenge is to a judicial order and the inherent jurisdiction is invoked to secure the ends of justice and

correct an abuse of the court process, not to interfere with an executive investigation. *Federal Investigation Agency v Hamid Ali* PLD 2023 SC 265 draws that distinction. The exceptional and justice-oriented character of the power is also settled in *The State v Asif Ali Zardari and another* 1994 SCMR 798 and *Bashir Ahmad v Zafr-ul-Islam* PLD 2004 SC 298. Correcting the impugned judicial order so that the special statute may take its course falls within those limits.

19. For these reasons, I allow this application in the following terms:

- i) The Order dated 22.05.2026 of the learned Judicial Magistrate is hereby set-aside.
- ii) The learned Judicial Magistrate shall within three days of the receipt of this judgment notify the Federal Investigation Agency (hereinafter “FIA”) under section 5(2) of the Act of 2022 and transmit to it the legible copies of the complaint, the remand proceedings and the statement in which the torture was alleged, the medico-legal material, the impugned Order and finally this judgment.
- iii) The competent office within the FIA shall place the matter before the Custodial Death and Torture Investigation Unit and proceed strictly in accordance with sections 5 and 13 of the Act and rules 5 to 8 of the Rules of 2025, under the supervision contemplated by the proviso to section 5(1).
- iv) The FIA shall afford a fair opportunity to the complainant and all persons against whom an adverse conclusion may be drawn and shall preserve and obtain all relevant record, including medical record, station-diary, lock-up material, remand material, CCTV footages, CDR and duty-roster and shall comply with all statutory deadlines.

- v) If the preliminary inquiry discloses reasonable grounds, further investigation shall follow according to the law. Whereas if the complaint is found to be frivolous, then rule 8 shall be applied by a reasoned order of the competent authority.

20. Office is directed to send copies of this judgment to the concerned Judicial Magistrate, the learned Sessions Judge, Mirpurkhas, Director General, FIA, and the National Commission for Human Rights, for information and necessary compliance.

21. The observations made in this judgment are confined to the statutory route and shall not prejudice the inquiry, investigation or trial.

JUDGE

APPROVED FOR REPORTING

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