

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-581 of 2025

Applicant : Muhammad Mureed s/o Sukhio Khan, Solangi
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State & others : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 20.11.2025
Date of order : 20.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Muhammad Mureed Solangi, invokes the inherent jurisdiction of this court seeking to set aside the order dated 12th September, 2025 passed by the learned 1st Judicial Magistrate Mehrabpur, whereby cognizance was taken against the applicant and he was joined as accused in a case bearing Crime No.104 of 2025, for offences under Sections 302 and 364 Pakistan Penal Code, registered at Police Station Halani. The applicant contends that his name was placed in Column No.2 of the final report submitted by the second investigating officer under Section 173 Cr.P.C, after declaring him innocent, however the learned Magistrate did not agree with the investigating officer's opinion and took cognizance against him. The applicant seeks his exoneration from the case and restoration of his name to Column No.2 as recommended by the investigating officer.

2. The facts giving rise to this application are that on 18th June, 2025 at about 2200 hours, an incident occurred at agricultural land bearing Survey No.200 situated in Deh Halani, Taluka Mehrabpur, District Naushahro Feroze, wherein the complainant Muhammad Yousif alleged that he along with his maternal uncle Muhammad Daud, brother-in-law Faheem Ali and son Kashif Ali aged about 22 to 23 years were giving water to their agricultural land when at about 2130 hours, five armed persons arrived at the spot whom they identified as Mureed Hussain armed with Kalashnikov, Arbab armed with repeater both sons of Muhammad Sukhial, Fida Hussain son of Mureed Hussain armed with Kalashnikov, Akhtar Hussain armed with axe and Muhammad Ayoob armed with

pistol both sons of Arbab, all by caste Solangi residents of village Kamal Solangi, Taluka Mehrabpur. According to the prosecution version, the accused persons after controlling the complainant party on force of deadly weapons forcibly kidnapped the son of complainant namely Kashif Ali at about 2200 hours and took him away in a white colored car parked nearby. Thereafter one of the co-accused Muhammad Ayoob Solangi informed the nephew of complainant namely Suhail Ahmed on mobile phone that they have committed murder of Kashif Bhanbhan by using bullet costing thirty rupees and the complainant party may take the dead body of deceased Kashif Bhanbhan. The complainant party departed together and came to know that police had taken the dead body of deceased in ambulance and they saw that one bullet had hit the chest of the deceased Kashif Ali and blood was oozing and he was dead. On the basis of these allegations, First Information Report bearing Crime No.104 of 2025 was registered at Police Station Halani, for offences under Sections 364 and 302 Pakistan Penal Code on 19th June, 2025 at 0130 hours against the nominated accused persons.

3. *First*, proceedings in the case were conducted by Assistant Sub Inspector Ghulam Muhammad Rajper of Police Station Halani who on 18th June 2025 at 2255 hours inspected the dead body of deceased lying in Memon Muhalla Halani Town. The dead body of deceased was stained with mud and blood. He recovered one motorcycle Honda CD 70 with registration No.NFD 8437 of red color, model 2017, one mobile phone Vego tell of black color, original CNIC of deceased, currency notes totaling Rs.170/- and one blood stained handkerchief. The said Assistant Sub Inspector prepared mashirnama in presence of mashirs Head Constable Muhammad Luqman Tunio and Police Constable Fida Hussain. He also prepared Danistnama in presence of mashirs Muhammad Mureed Bhanbhan and Nabi Bux Bhanbhan and prepared *Lash Chakas* Form with request to concerned Medical Officer Rural Health Center Halani for conducting post mortem of deceased. Thereafter Assistant Sub Inspector Ghulam Muhammad

Rajper lodged First Information Report bearing Crime No. 104 of 2025 under Sections 302 and 364 Pakistan Penal Code against the accused persons and then handed over copy of First Information Report as well as all initial proceedings to Sub Inspector Ghulam Hussain Channa of Police Station Halani for conducting further investigation.

4. The first investigating officer Sub Inspector Ghulam Hussain Channa recorded statements of prosecution witnesses Muhammad Daud and Faheem under Section 161 Cr.P.C on 19th June, 2025 in which they disclosed the same facts as stated by complainant in the First Information Report. On 19th June, 2025 at 0840 hours, the investigating officer visited the place of incident situated in Memon Muhalla wherefrom dead body of deceased Kashif was recovered and he prepared mashirnama in presence of mashirs Muhammad Mureed and Nabi Bux Bhanbhan. On 20th June, 2025 accused Muhammad Mureed, Muhammad Murad, Fida Hussain, Akhtar Ali and Muhammad Ayoob obtained interim pre-arrest bail granted by the Sessions Judge Naushahro Feroze. The accused persons who obtained interim pre-arrest bail appeared before the investigating officer who recorded their statements in which they all stated that they are innocent and they have not committed the murder of Kashif Bhanbhan and they have no knowledge about the incident. On 24th June, 2025 the investigating officer recorded statement of one Imtiaz Ali Solangi being independent witness in which he stated that Zahid Hussain Solangi and Sajid Solangi have committed murder of deceased Kashif with fire of pistol. On 24th June 2025, the investigating officer collected final post mortem report of deceased in which the Medical Officer opined that death of deceased occurred due to receiving firearm injury. On 25th June 2025, Assistant Sub Inspector Ghulam Abbas Rind arrested accused Zahid and recovered one T.T pistol from his possession with five live bullets and prepared mashirnama in presence of mashirs Head Constable Manzoor Hussain and Police Constable Sajan Ali and then registered First Information Report against said accused bearing Crime No. 106 of 2025 under Section 23(1)(a) Sindh

Arms Act at Police Station Halani. On the same day, the investigating officer recorded statement of accused Zahid Ali from whom pistol was recovered and he stated that he along with Sajid Ali Solangi has committed murder of deceased and he himself made straight fire upon the deceased who received firearm injury and expired. On 25th June, 2025 at 1400 hours, the investigating officer arrested accused Sajid Ali from Memon Ice Factory Dubar Muhalla Halani and prepared mashirnama in presence of mashirs. On the same day at 1300 hours, the investigating officer visited place of incident situated at Survey No.200 Deh Halani Taluka Mehrabpur from which place the accused persons kidnapped away the deceased and investigating officer prepared mashirnama in presence of mashirs. On 25th June 2025, the investigating officer recorded statement of accused Sajid Ali Solangi in which he admitted his guilt and stated that he along with co-accused Zahid Ali committed murder of deceased Kashif Bhanbhan and accused Zahid Ali made fire upon the deceased and committed his murder. On 28th June 2025, the investigating officer recorded statement of one independent witness namely Suhail Khan Bhanbhan in which he stated that accused Muhammad Ayoob contacted with him on mobile phone and told him to take away the dead body of Kashif Ali and they have committed murder of deceased Kashif Ali by using one bullet costing thirty rupees.

5. During the course of investigation, the investigating officer collected criminal record of deceased Kashif Ali Bhanbhan which showed that deceased was criminal type of person being involved in six criminal cases registered against him at Police Station Halani. Meanwhile, the complainant filed Criminal Misc. Application No.2631 of 2025 before the court of learned Additional Sessions Judge Kandiaro for transfer of investigation to other police officer on the ground that he had lost confidence in the investigating officer. The said application was allowed vide order dated 28th June 2025 and investigation of the case was directed to be handed over to another police officer not below the rank of Inspector posted in District Naushahro Feroze except Police Station Halani.

6. On 3rd July 2025, Inspector Muhammad Masood Jutt, Station House Officer Police Station Khanwahan received case papers from the first investigating officer for further investigation as per directions of Senior Superintendent of Police Naushahro Feroze. On 8th July 2025, the second investigating officer recorded further statement of accused Muhammad Mureed Solangi under Section 162 Cr.P.C in which he stated that on the date and time of incident he was present at his *Otaq* located in Village Kamal Solangi and neither he was present at the place of incident nor is he involved in the murder of deceased Kashif Bhanbhan. On the same day, the investigating officer recorded statements of respectable persons Asif Ali Solangi and Rizwan Ali Solangi under Section 161 Cr.P.C and in those statements they both stated that accused Mureed Solangi is *Nekmard* of Solangi Community and on the date and time of incident he was present at his *Otaq* and there was *Faisla* which was held under supervision of said Muhammad Mureed Solangi. The investigating officer also collected Call Detail Record of accused Mureed Solangi which also showed that at the time of incident he was present at his village. On 8th July 2025, the investigating officer recorded further statement of accused Fida Hussain Solangi under Section 162 Cr.P.C in which he stated that on the date and time of incident he was present at his showroom situated at Bypass Halani and the complainant has falsely implicated him in this false case. The investigating officer collected Call Detail Record of said accused Fida Hussain Solangi which also showed that at the time of offence he was present at his showroom Bypass Halani. On 8th July 2025, the investigating officer recorded statement of respectable persons namely Akbar Ali Arain and Rustam Ali Gadehi under Section 161 Cr.P.C in which they both stated that on the date and time of incident they were present at the showroom of accused Fida Hussain Solangi at Bypass road Halani and he was sitting at his showroom and he did not leave the showroom and was present there. The interim pre-arrest bail application of accused was dismissed by the Additional Sessions Judge Kandiaro on 13th August, 2025 and then accused persons namely

Muhammad Mureed Solangi, Arbab alias Muhammad Murad, Fida Hussain and Akhtar Ali obtained interim pre-arrest bail from this Court vide Criminal Bail Application No. S-709 of 2025.

7. After completing the investigation of the case, the second investigating officer let off accused Muhammad Mureed, Fida Hussain, Arbab alias Muhammad Murad and Akhtar Ali under Section 169 Cr.P.C on the grounds that they are innocent and at the time of offence they were not present at the place of alleged incident. The investigating officer recommended for challan the accused Zahid Ali and Sajid Ali including absconding accused Muhammad Ayoob Solangi for offence punishable under Sections 302 and 34 Pakistan Penal Code. The final report under Section 173 Cr.P.C. was submitted before the learned Magistrate along with scrutiny report of learned District Public Prosecutor Naushahro Feroze dated 20th August, 2025 bearing No.3132/DPP/NF/2025 wherein the learned District Public Prosecutor concurred with the opinion of investigating officer and recommended that case may be sent up against accused persons namely Zahid Ali, Sajid Ali including absconding accused Muhammad Ayoob Solangi for offence punishable under Sections 302 and 34 Pakistan Penal Code while the names of let off accused persons Muhammad Mureed, Fida Hussain, Arbab alias Muhammad Murad and Akhtar Ali may be kept in Column No.2 of challan charge sheet with blue ink.

8. However, the learned 1st Judicial Magistrate Mehrabpur after hearing arguments from learned counsel for complainant, learned counsel for accused persons placed in Column No.2, learned counsel for arrested accused and learned Assistant District Public Prosecutor for State, passed detailed order dated 12th September, 2025 whereby he disagreed with the opinion of investigating officer and took cognizance against all accused persons including the accused persons whose names were placed in Column No.2 of final report. The learned Magistrate held that there is prima facie case made out against all accused including accused persons named in Column No.2 and cognizance was taken under Section

190(1)(b) Cr.P.C. Non-bailable warrants were directed to be issued against absconding accused Muhammad Ayoob son of Arbab alias Muhammad Murad Solangi. The learned Magistrate ordered that since offences under Sections 302 and 364 Pakistan Penal Code are exclusively triable by Sessions Court, the record and proceedings of the case shall be transmitted to the Sessions Court Naushahro Feroze upon completion of all requisite legal formalities. Being aggrieved by this order, the present applicant Muhammad Mureed Solangi has filed this Criminal Miscellaneous Application seeking to set aside the impugned order and seeking restoration of his name to Column No.2 of final report.

9. Mr. Junejo, the learned counsel for applicant has contended that the learned Magistrate failed to discuss factual as well as legal aspects of the FIR while deciding the matter. He submitted that the impugned order is not in accordance with law and is liable to be set aside. The learned counsel contended that during investigation, the complainant himself filed application for transfer of investigation to other police officer and the same was allowed by the court of learned Sessions Judge Kandiaro and investigation was handed over to the second investigating officer. The learned counsel submitted that after that, the applicant completely cooperated with investigation and presented himself before investigating officer and proved his innocence that at the time of incident he was not present at the place of incident but was present at his *Otaq* located in village Kamal Solangi and had no involvement in the crime and the same version is also supported by statements of independent witnesses namely Asif Ali and Rizwan Solangi which were recorded by investigating officer. The learned counsel argued that the investigating officer of the case also collected CDR of applicant and the same was in corroboration of statement of applicant and the plea of alibi raised by applicant was confirmed. The learned counsel contended that investigating officer of the case after conducting thorough investigation and collection of cogent and tangible evidence put the name of applicant in Column No. 2 and learned District Public Prosecutor vide scrutiny memo dated 20th

August, 2025 also concurred with the opinion of investigating officer while agreeing to place the name of present applicant in Column No.2 of final report on the basis of investigating officer's findings. The learned counsel submitted that from lodging of FIR to date, the applicant has never absconded from procedural formalities of law and has strictly joined investigation and applied for pre-arrest bail before this Court which is pending adjudication. The learned counsel argued that learned Magistrate has failed to consider that the complainant has lodged false, fabricated, concocted and managed FIR and it will be in the interest of justice to allow this application.

10. Conversely, the learned counsel for complainant/respondent No.2 has opposed the application and supported the impugned order passed by learned Magistrate. The learned Deputy Prosecutor General for State has also supported the impugned order and submitted that prosecution witnesses have fully implicated all accused persons in their statements under Section 161 Cr.P.C and complainant has implicated them in FIR with specific role. He submitted that the plea of alibi is of weakest type of evidence and would be determined by trial court. The learned Deputy Prosecutor General contended that investigating officer has placed names of certain accused as let off accused on the basis of statements of some persons on plea of alibi without properly verifying the same. He submitted that cognizance has been rightly taken by learned Magistrate against all accused persons including let off accused for committing offence under Sections 302, 364 and 34 Pakistan Penal Code.

11. This Court has heard learned counsel for applicant, learned counsel for complainant and learned Deputy Prosecutor General for State at considerable length and has examined the record with their able assistance. The question that arises for determination is whether the learned Magistrate was legally justified in taking cognizance against the applicant whose name was placed in Column No. 2 of the final report submitted by investigating officer under Section 173 Cr.P.C.

after declaring him innocent, and whether the impugned order requires interference by this Court.

12. Before proceeding to examine the merits of the case, it would be pertinent to understand the legal framework governing the powers of Magistrate under Section 190 Cr.P.C. vis-a-vis final report submitted by investigating officer under Section 173 Cr.P.C. and the scope of judicial review of such administrative orders.

13. Section 173 Cr.P.C. provides for submission of police report to Magistrate after completion of investigation. The investigating officer is required to forward to Magistrate having jurisdiction a report setting forth the names of parties, nature of information, names of persons who appear to be acquainted with circumstances of the case, whether any offence appears to have been committed and by whom, whether accused has been arrested, whether he has been released on bail and whether he has been forwarded in custody. The report is accompanied by all documents or relevant extracts thereof on which prosecution proposes to rely including statements recorded under Section 161 Cr.P.C. However, it is well-settled principle of law that such report is not binding upon the Magistrate. The Magistrate is vested with independent judicial discretion to examine the material placed before him and arrive at his own conclusion regarding whether cognizance should be taken or not.

14. Section 190 Cr.P.C confers upon Magistrates the power to take cognizance of offences in three distinct manners, namely upon receiving complaint of facts which constitute such offence, upon police report of such facts, and upon information received from any person other than police officer or upon his own knowledge that such offence has been committed. When cognizance is taken under Section 190 (1) (b) Cr.P.C upon police report, the Magistrate is empowered to take cognizance irrespective of opinion or recommendation of investigating officer. The Magistrate has ample powers under Section 173 Cr.P.C to scan the entire material placed before him in shape of summary report by

investigating officer including averments of FIR, statements recorded under Section 161 Cr.P.C and other relevant material and pass appropriate order by applying his judicial mind either accepting or declining said report. The Magistrate should not follow summary report as routine matter as deciding authority is exclusively conferred upon Magistrate and investigating agency has no such authority whatsoever to decide guilt or innocence of accused under provisions of Code of Criminal Procedure.

15. The Hon'ble Supreme Court of Pakistan in the celebrated case of *Muhammad Bux versus Province of Sindh* (2017 MLD 1428) has held that it is settled position of law that ipse dixit opinion of investigating officer is not binding upon court. The court observed that it is also well-settled by now that Magistrate can take cognizance of offence even in case of negative report submitted by police that accusation is baseless and no case is made out against delinquents. This principle has been consistently followed by Superior Courts in numerous judgments.

16. In the case of *Nadeem Akhtar Butt versus The VIth Judicial Magistrate Malir Karachi* (2017 MLD 1993), it was held that Magistrate is not bound by opinion or recommendation of investigating officer and is empowered to disagree or discard report submitted by investigating officer. However, it is incumbent upon Magistrate to examine all material facts, circumstances and documents placed by investigating officer along with report judiciously and there should be sufficient reasons to decline such report.

17. Similarly, in Criminal Miscellaneous Application No. S-323 of 2022 decided by this Court, it was observed that two types of accused are placed in Column No.2 of challan, firstly those who are not sent up for trial either for lack of sufficient evidence on record to connect them with commission of alleged offence or being found to be innocent by investigating officer and shown in blue ink, leaving to court to see whether they are to be summoned for trial or not, and secondly those who could not be apprehended by police during investigation and

are shown as absconders in red ink. The court held that report submitted by investigating officer under Section 173 Cr.P.C is not binding on Judicial Magistrate who therefore, has full jurisdiction under Section 190 Cr.P.C. in taking cognizance of offence and that Magistrate is not bound by opinion or recommendation of investigating officer and can take cognizance if material on record discloses commission of cognizable offence.

18. In Criminal Miscellaneous Application No. S-312 of 2022, this Court reiterated the well-settled principle that report submitted by investigating officer under Section 173 Cr.P.C is not binding upon Judicial Magistrate and that Magistrate has been conferred with powers under Section 190 Cr.P.C to take cognizance of offence upon receiving complaint of facts which constitute offence, upon report in writing of such facts made by any police officer, and upon information received from any person other than police officer or upon his own knowledge or suspicion that such offence has been committed.

19. The ratio *decidendi* emerging from these authoritative pronouncements is that Magistrate is vested with independent judicial power to take cognizance of offence notwithstanding opinion of investigating officer to contrary, provided that material on record prima facie discloses commission of cognizable offence. The Magistrate is not bound to mechanically accept recommendation of investigating officer and rubber stamp his opinion. Rather, the Magistrate is required to independently apply his judicial mind to material placed before him and arrive at satisfaction whether cognizable offence has been committed and whether accused persons should be summoned to face trial.

20. Applying these well-settled principles of law to facts of present case, this Court finds that the learned Magistrate has passed a detailed, well-reasoned and speaking order dated 12th September, 2025 running into several pages wherein he has examined the entire material on record including FIR, statements of prosecution witnesses recorded under Section 161 Cr.P.C, statements of accused recorded during investigation, statements of so-called independent

witnesses produced by accused, CDRs, criminal record of deceased and all other relevant material placed before him. The learned Magistrate has given due consideration to arguments advanced by learned counsel for complainant, learned counsel for accused placed in Column No.2 and learned Assistant District Public Prosecutor for State. The learned Magistrate has thereafter recorded cogent reasons for disagreeing with opinion of investigating officer and taking cognizance against all accused persons including those placed in Column No.2.

21. The learned Magistrate has observed that complainant and eyewitnesses have categorically implicated accused persons directly in commission of offence in FIR as well as in their statements recorded under Section 161 Cr.P.C. The learned Magistrate has noted that prosecution witnesses Muhammad Daud and Faheem Ali have fully supported version of complainant. The learned Magistrate has observed that investigating officer has failed to collect any credible or satisfactory evidence justifying discharge of accused placed in Column No.2. The learned Magistrate has held that investigation appears superficial and lacks due diligence. The learned Magistrate has noted that investigating officer has made no serious efforts to arrest absconding accused Muhammad Ayoob son of Arbab alias Muhammad Murad Solangi despite fact that he is son of one of accused placed in Column No.2 and despite fact that his interim pre-arrest bail was recalled by Additional Sessions Judge Kandiaro. This selective laxity and apparent bias has raised grave concerns in mind of learned Magistrate regarding fairness, impartiality and integrity of investigation.

22. The learned Magistrate has rightly observed that only two of accused namely Muhammad Mureed Solangi and Fida Hussain Solangi out of five accused named in FIR have taken plea of alibi whereas roles of other co-accused Arbab alias Muhammad Murad son of Sukhyo Khan Solangi, Akhtar Hussain son of Arbab alias Muhammad Murad Solangi and absconding accused Muhammad Ayoob Solangi son of Arbab alias Muhammad Murad in alleged offence are yet to be determined. The learned Magistrate has held that plea of

alibi is matter that is to be assessed during course of trial and cannot be conclusively decided at preliminary stage. The learned Magistrate has observed that alleged offence is of heinous nature involving abduction and murder and sufficient material is available on record to justify taking of cognizance. The learned Magistrate has held that at this stage, question of accused's guilt or innocence cannot be decided and can only properly be determined after recording and evaluating evidence in full-fledged trial.

23. The learned Magistrate has noted discrepancy in scrutiny reports submitted by learned District Public Prosecutor. The learned Magistrate has observed that in first scrutiny memo dated 9th July 2025 submitted at time of interim report, learned District Public Prosecutor was of considered view that prima facie case existed against all accused persons including those later placed in Column No.2. However, subsequently in scrutiny memo dated 20th August 2025, learned District Public Prosecutor concurred with opinion of investigating officer and recommended taking cognizance only against certain accused while agreeing to place names of remaining accused in Column No.2. This change of opinion by learned District Public Prosecutor has been noted by learned Magistrate as factor undermining credibility of investigation.

24. The learned Magistrate has also noted that investigating officer collected CDRs of accused Muhammad Mureed Solangi and Fida Hussain Solangi purportedly corroborating their plea of alibi. However, learned Magistrate has rightly observed that CDR always shows location of SIM card and mobile phone which can be used by any person at any place easily and CDR does not show presence of person. The learned Magistrate has held that worth of CDR would be determined at stage of trial after recording evidence. This observation of learned Magistrate is in accordance with well-settled principles of appreciation of evidence.

25. Upon careful examination of impugned order, this Court finds that learned Magistrate has exercised his jurisdiction under Section 190(1)(b) Cr.P.C.

in judicious manner after due application of judicial mind to material placed before him. The learned Magistrate has given cogent and valid reasons for disagreeing with opinion of investigating officer. The order is neither arbitrary nor capricious nor suffering from non-application of mind. On the contrary, the order demonstrates that learned Magistrate has carefully scrutinized entire material on record and has arrived at conclusion that prima facie case is made out against all accused persons including those placed in Column No. 2 of final report.

26. The contention of learned counsel for applicant that applicant cooperated with investigation and established his alibi through CDR and statements of witnesses does not merit acceptance. These are matters which require appreciation of evidence during course of trial. At stage of taking cognizance, Magistrate is not required to weigh evidence minutely or embark upon appreciation of evidence which is task to be performed at stage of trial. At stage of cognizance, Magistrate is only required to see whether material on record prima facie discloses commission of cognizable offence. If answer is in affirmative, cognizance must be taken and matter should proceed to trial where accused will have full opportunity to establish his defense including plea of *alibi*.

27. The plea of *alibi* is undoubtedly defense available to accused but it is well-settled that burden of proving alibi lies upon accused and it is one of weakest forms of defense. Mere collection of CDR and recording of statements of so-called respectable persons at investigation stage cannot conclusively establish alibi. The credibility of such defense witnesses and reliability of CDR can only be tested during course of trial through cross-examination and confrontation with prosecution evidence. The investigating officer cannot usurp judicial function of deciding whether *alibi* is established or not. That is quintessentially judicial function which can only be performed by trial court after recording evidence of both prosecution and defense.

28. It is also pertinent to note that applicant Muhammad Mureed Solangi has been specifically named in FIR as one of accused persons who participated in commission of offence. The complainant has alleged that applicant Mureed Hussain armed with Kalashnikov was one of five armed persons who came to agricultural land, controlled complainant party on force of weapons and forcibly kidnapped deceased Kashif Ali. This specific allegation in FIR cannot be brushed aside lightly merely on basis of statements of so-called respectable persons recorded by investigating officer during investigation. The complainant and prosecution witnesses Muhammad Daud and Faheem Ali who are eyewitnesses to occurrence have supported version of FIR in their statements recorded under Section 161 Cr.P.C. Their testimony has to be examined and tested during course of trial through cross-examination. It would be wholly premature and legally impermissible to hold at this preliminary stage that complainant and prosecution witnesses are not worthy of credence and that investigating officer's opinion should be blindly accepted.

29. Furthermore, the fact that investigation was transferred from first investigating officer to second investigating officer at instance of complainant on ground that complainant had lost confidence in first investigating officer itself raises serious question mark about fairness and impartiality of investigation conducted by second investigating officer. When complainant himself had moved application for transfer of investigation alleging that first investigating officer was not conducting fair investigation and was favoring accused persons, and when that application was allowed by Sessions Judge Kandiaro vide order dated 28th June 2025, it creates legitimate doubt about bona fides of subsequent investigation conducted by second investigating officer which resulted in exoneration of several accused including present applicant. The learned Magistrate has rightly taken note of this aspect of matter.

30. The learned Magistrate has also rightly observed that investigating officer has made no sincere or effective effort to apprehend absconding accused

Muhammad Ayoob son of Arbab alias Muhammad Murad Solangi despite fact that his interim pre-arrest bail was recalled by Additional Sessions Judge Kandiaro on 13th August, 2025 and that he is real son of one of accused placed in Column No.2 namely Arbab alias Muhammad Murad. This lack of diligence on part of investigating officer in arresting absconding accused who is closely related to other accused placed in Column No.2 reflects compromised and partial investigation raising serious concerns regarding integrity and impartiality of proceedings. When investigating officer lets off certain accused on ground that they were not present at spot while at same time fails to arrest another accused who is son of one of let off accused, it creates strong inference that investigation has been conducted in partisan manner to benefit certain accused persons.

31. The learned Magistrate has also correctly observed that offences alleged under Sections 364 and 302 Pakistan Penal Code are of extremely serious and heinous nature involving alleged abduction and murder of individual. In such cases, courts are expected to exercise heightened caution before granting discharge or dismissal of charges particularly when materials on record raise serious questions regarding accused's involvement. The law requires that all such matters involving disputed facts and serious allegations proceed to trial where evidence can be properly recorded, tested and evaluated. Premature discharge at stage of cognizance would not only be legally untenable but would also amount to denial of justice to aggrieved party.

32. The principle that emerges from consistent judicial pronouncements is that at stage of taking cognizance, court is not required to hold mini trial or embark upon detailed appreciation of evidence. The court is only required to see whether allegations made in FIR and material collected during investigation prima facie disclose commission of cognizable offence. If material on record prima facie indicates involvement of accused in commission of offence, cognizance must be taken even if investigating officer has formed opinion that accused is innocent. The opinion of investigating officer is not determinative and

does not bind Magistrate. The Magistrate is vested with independent judicial discretion to examine material and arrive at his own conclusion.

33. In present case, material on record clearly indicates that complainant who is father of deceased has specifically named applicant as one of accused persons who participated in kidnapping and murder of his son. Prosecution witnesses who are eyewitnesses have supported this version. Post mortem report confirms that deceased died due to firearm injury. There is no inherent improbability in prosecution version. Under these circumstances, learned Magistrate was fully justified in taking cognizance against applicant notwithstanding opinion of investigating officer to contrary.

34. The argument of learned counsel for applicant that learned Magistrate failed to discuss factual and legal aspects while deciding matter is patently incorrect. As discussed above, learned Magistrate has passed detailed and speaking order discussing all relevant facts and legal principles. The argument that impugned order is not in accordance with law is also devoid of merit. The impugned order is squarely in consonance with well-settled legal principles governing exercise of powers under Section 190 Cr.P.C.

35. The contention that learned District Public Prosecutor had concurred with opinion of investigating officer in scrutiny report dated 20th August, 2025 does not assist applicant. The scrutiny report of District Public Prosecutor is also not binding upon Magistrate. The Magistrate is vested with independent judicial power to take cognizance if material on record prima facie discloses commission of cognizable offence. Moreover, as noted by learned Magistrate, there was discrepancy in two scrutiny reports submitted by learned District Public Prosecutor at different stages which itself raised doubt about reliability of later scrutiny report concurring with investigating officer's opinion.

36. It is also relevant to note that applicant has not been able to point out any illegality, irregularity or jurisdictional error in impugned order. The impugned order is result of proper exercise of judicial discretion by learned

Magistrate after due application of mind to material on record. The order is neither arbitrary nor perverse nor suffering from non-application of mind. The order cannot be faulted on any legal ground.

37. This Court is also conscious of scope and ambit of jurisdiction under Section 561-A Cr.P.C. The powers under Section 561-A Cr.P.C are extraordinary powers to be exercised sparingly and only in exceptional circumstances where gross illegality or jurisdictional error is apparent on face of record or where failure of justice would result if court does not intervene. These powers are not to be exercised as matter of course to interfere with orders passed by subordinate courts in proper exercise of their jurisdiction. When subordinate court has applied its mind to material on record and has passed reasoned order in exercise of jurisdiction vested in it by statute, this Court in exercise of jurisdiction under Section 561-A Cr.P.C. should be slow to interfere with such order merely because different view is possible.

38. In present case, learned Magistrate has exercised jurisdiction vested in him under Section 190 (1) (b) Cr.P.C, after due application of judicial mind to material placed before him. The order is speaking order giving cogent reasons for taking cognizance. There is no illegality or jurisdictional error apparent on face of impugned order. The order does not result in failure of justice. On contrary, allowing this application and setting aside impugned order would result in failure of justice as it would deprive complainant of his right to have matter adjudicated through full-fledged trial. Under these circumstances, this Court finds no justification to exercise extraordinary jurisdiction under Section 561-A Cr.P.C to interfere with impugned order.

39. The applicant will have full opportunity to establish his defense including plea of alibi during course of trial. He can examine defense witnesses including those whose statements were recorded by investigating officer during investigation. He can produce CDR in evidence. He can cross-examine prosecution witnesses and challenge their credibility. All questions regarding

guilt or innocence of applicant will be decided by trial court after recording and appreciating evidence of both prosecution and defense. At this stage of cognizance, it would be premature and legally impermissible to hold that applicant has successfully established his innocence and should be exonerated from case.

40. For all foregoing reasons, this Court is of considered view that learned Magistrate has rightly taken cognizance against applicant under Section 190 (1) (b) Cr.P.C. The impugned order dated 12th September, 2025 is in accordance with law and does not call for any interference by this Court. The Criminal Miscellaneous Application being devoid of merit is hereby dismissed. However, it is clarified that observations made in this order are only for purpose of deciding present application at stage of cognizance and will not influence trial court in any manner while deciding case on merits after recording evidence.

J U D G E