

# IN THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Misc. Application No.990 of 2025**

Applicant : Mashooq Ali  
S/o. Agha Abdul Laitf Khan  
Through Mr. Saadi Sardar, Advocate

Respondent No.2 : Muhammad Dawood  
Son of Muhammad Siddique,  
Through Mr. Mir Sadiq, Advocate

Respondent No.3 : Investigation Officer,  
SDPO Darkshan,  
District South, Karachi

Respondent No.4 : SSP Investigation.

Respondent No.5 : Abdullah son of Muhammad Rafiq.  
Respondent No.6 : Tariq Waheed son of Abdul Wahid.  
Respondent No.7 : Abdul Qadir son of Abdul Qayyum.  
Through Mr. Muhammad Ilyas  
Awan, Advocate.

The State : Ms. Seema Zaidi, Addl. P. G. Sindh

Date of hearing : 04.05.2026.

Date of Order : 04.05.2026.

## **ORDER**

**Jan Ali Junejo, J:--** Through this Criminal Miscellaneous Application, the Applicant has sought setting aside of the Order dated 20.10.2025 (hereinafter referred to as the "Impugned Order") passed by the learned Civil Judge & Judicial Magistrate-VIII, Karachi South, whereby the learned Magistrate disagreed with the final report submitted under Section 173 Cr.P.C. by the Investigating Officer and referred the matter to FIA.

2. The facts, as reflected from the record, are that FIR No. 114/2025, P.S. Kalakot, Karachi, dated 18.03.2025, was registered under Sections 365/342/34 on the report of Muhammad Daud son of Muhammad Siddiq, alleging that he earns his livelihood as a rickshaw driver and resides with his family, reported that on

12.03.2025 at about 7:30 PM, some unknown persons riding three motorcycles came to his house and took away his son, namely Sikandar son of Dawood, aged about 27/28 years, on the allegation of motorcycle theft, whereafter an FIR regarding motorcycle theft was registered against his son at Police Station Kalakot; that on 13.03.2025, while in police custody, his son's condition suddenly deteriorated and he was shifted by Kalakot Police to Civil Hospital Karachi for treatment, where he expired during the course of treatment; that subsequently a video went viral showing one Abdullah son of Muhammad Rafiq, along with his associates, having tied the hands of the deceased and subjecting him to interrogation regarding the alleged theft; and that the complainant alleged that the said Abdullah and his identifiable associates had abducted his son, kept him in illegal confinement, and thus requested that legal action be taken against them.

2. Record also reflects that FIR No. 110/2025, P.S. Kalakot, Karachi, dated 13.03.2025, was registered under Sections 381-A/411 P.P.C. on the report of Abdullah son of Muhammad Rafique, alleging that a motorbike was stolen; the suspect was traced through CCTV footage, apprehended by Abdullah and his associates, recovered along with motorbike parts, and handed over to the police.

3. Learned counsel for the Applicant argued that the Impugned Order is illegal and without lawful authority, as the learned Magistrate misapplied the Torture and Custodial Death (Prevention and Punishment) Act, 2022 by referring the matter to FIA despite absence of its essential ingredients, inasmuch as the record (including FIRs, statement under Section 176 Cr.P.C., DSP investigation and DIG inquiry) consistently demonstrates that the alleged violence was committed by private individuals prior to police custody and no material exists showing torture or custodial death by any public official. It was further contended that the Magistrate exceeded his limited mandate under Section 5(2) of the

Act by bypassing the prescribed statutory procedure and unilaterally transmitting the matter to FIA without first satisfying the required conditions; that in absence of any complaint before FIA alleging an offence under the Act—particularly when the complainant himself never accused the police—the Magistrate could not create a case on his own motion; that the direction to FIA to report before the Magistrate is contrary to Section 13(3) of the Act; that the referral amounts to a parallel investigation in violation of the law laid down in *Mst. Sughran Bibi v. The State* (PLD 2018 SC 595); and that the Impugned Order is vitiated by inconsistency, overreach, and premature observations tantamount to trial findings. Hence, it was prayed that the Impugned Order be set aside.

4. Learned counsel for Respondent No. 2 submitted that he supports and relies upon the contents of the FIR No. 114/2025 of PS Kalakot lodged by Respondent No.2, reiterating the allegations and maintaining that the same are true and correct.

5. Learned Additional Prosecutor General, Sindh as well as learned counsel for Respondent No.5 to 7, supported the Impugned Order and opposed the instant application, contending that the same is not maintainable in its present form, as the Applicant has an adequate alternate remedy under the law. They further argued that the powers of the Magistrate while dealing with a report under Section 173 Cr.P.C. are wide and include the authority to disagree with the conclusion of the Investigating Officer and to direct further investigation through any competent agency where the circumstances so warrant. They submitted that the death of a person, allegedly after apprehension and subsequent custody, raises serious questions requiring an independent, transparent, and impartial probe, and that referral to FIA a specialized federal agency was made to ensure credibility of the investigation. It was further contended that at this stage, the Court is not required to determine conclusively whether an offence under the special law is made out, as such determination can only follow a complete investigation, and

that no prejudice is caused to the Applicant by mere referral of the matter for further inquiry.

6. I have heard learned counsel for the parties and perused the available record with their assistance, including the report of DIG dated 22.04.2025 as well as the memo of arrest dated 13.03.2025 of accused Sikandar prepared by SI Raja Muhammad Afzal of PS Kalakot. A perusal of the said DIG report reflects that *“after recovery of some part of the motorcycle, accused Sikandar was handed over to PC Muhammad Siraj, Intelligence Officer of PS Kalakot, by Abdullah,”* and that *“the Duty Officer stated that accused Sikandar was perfectly fine at that time and was not complaining of any pain or torture.”* The scope of interference by this Court in matters arising out of an order passed on a report under Section 173 Cr.P.C. is limited. A Magistrate is not bound to accept the conclusion of the Investigating Officer and is fully competent to disagree with the report, to direct further investigation, or to adopt any lawful course to ensure that the matter is properly and fairly investigated. The power exercised by the learned Magistrate in the present case, whereby the matter has been referred to the FIA for further probe, cannot be said to be without jurisdiction, particularly when the circumstances surrounding the death of the deceased warranted deeper scrutiny.

7. The contention of the learned counsel for the Applicant that no case under the Torture and Custodial Death (Prevention and Punishment) Act, 2022 is made out at this stage involves disputed questions of fact, which cannot be conclusively determined without a thorough investigation. The learned Magistrate, in order to ensure transparency and an independent inquiry, has referred the matter to a specialized agency. Such an exercise, at this stage, does not prejudice the rights of the Applicant, as the investigation is still underway and all legal safeguards remain available.

8. As regards the objection relating to parallel proceedings and reliance on *PLD 2018 SC 595 (Mst. Sughran Bibi v. The State)*, the same

is distinguishable in the present facts.

9. In view of the above, I do not find any illegality, irregularity, or jurisdictional defect in the Impugned Order warranting interference by this Court in exercise of its inherent powers under Section 561-A Cr.P.C. Consequently, this Criminal Miscellaneous Application is dismissed.

**JUDGE**