

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Cr. Misc. Application No. S-184 of 2026

[Mst. Waddan Kosh Vs. Bashir and 02 others]

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Cr. Revision Application No. S-29 of 2026

[Mst. Waddan Kosh Vs. Akbar and 02 others]

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Cr. Transfer Application No. S-11 of 2026

[Mst. Waddan Kosh Vs. Learned ADJ Shahdadpur & 05 others]

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Mr. Abdul Hafeez Khoso, advocate for the applicant(s).
Mr. Sikandar Ali Kolachi, advocate for the respondents.
Mr. Neel Parkash, Deputy Prosecutor General Sindh.

Date of hearing: 20.07.2026
Date of Order: 24.07.2026

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O R D E R

Khalid Hussain Shahani, J. – By this consolidated order, I propose to finally adjudicate upon the instant Criminal Revision Application, preferred against the order dated 21.05.2026 rendered by the learned Additional Sessions Judge, Shahdadpur, in Cancellation of Bail Application No.167 of 2019, arising out of Crime No.79 of 2018 registered at Police Station Shahpur Chakar, District Sanghar, whereunder the application seeking cancellation of the post-arrest bail granted to Respondents No.1 and 2 was declined. Concomitantly, the applicant has invoked Section 497(5), Cr.P.C., praying for cancellation of the said bail, and has further preferred a Criminal Transfer Application under Section 526, Cr.P.C., seeking the transfer of Sessions Case No.167 of 2019, Re- (The State v. Bashir Ahmed and others) from the Court of the learned Additional Sessions

Judge, Shahdadpur, to any other Court of competent jurisdiction within District Sanghar.

2. Inasmuch as the aforementioned proceedings stem from a common F.I.R. and are underpinned by identical questions of law and fact, and having been argued conjointly, I deem it expedient to dispose of the same through this singular, consolidated pronouncement.

3. The genesis of the prosecution narrative, as embodied in F.I.R. No.79 of 2018, is that on 04.08.2018 the complainant, Mst. Waddan, averred that her daughter, Mst. Zahooran, wedded to Respondent No.1, Akbar Kosh, and then in a state of pregnancy had, about eight days prior to the lodging of the F.I.R., been declared "Kari" by the accused party. It is alleged that the complainant was subsequently apprised of her daughter's demise and clandestine interment in a graveyard proximate to the village of the complainant. Upon the complainant's approach, accompanied by kinsmen, to the said graveyard, a freshly excavated grave was identified, and upon exhumation, the mortal remains of Mst. Zahooran were recovered, culminating in the registration of the instant F.I.R.

4. In the course of investigation, Respondent No.1, Akbar, was taken into custody and thereafter enlarged on post-arrest bail by the learned Additional Sessions Judge, Shahdadpur, vide order dated 28.12.2019, principally on the reasoning that no specific role, save that of husband of the deceased, had been ascribed to him; that the prosecution edifice rested on hearsay; that no ocular account of the occurrence existed; and that the F.I.R. was conspicuously silent as to the precise time and mode of death, warranting further inquiry. Respondent No.2, Aashiq Ali, was subsequently apprehended and likewise admitted to post-arrest bail vide order dated 18.03.2021, on parity of reasoning, the trial Court having observed that no overt act was attributable to him and that his position was indistinguishable from that of co-accused Akbar.

5. Pending trial, the applicant preferred an application under Section 497(5), Cr.P.C., seeking cancellation of the bail aforementioned, which application, upon due hearing, met dismissal vide order dated 21.05.2026.

6. Learned counsel for the applicant/complainant submitted with considerable emphasis that the deceased was done to death under the guise of "Karo Kari," her body clandestinely interred to obliterate traces of the crime. He further submitted that the opinion of the Special Medical Board, constituted upon exhumation, conclusively established that the deceased had met a homicidal death occasioned by head injuries inflicted through a hard and blunt substance, evidence squarely corroborative of the prosecution version, yet the learned trial Court had failed to accord due weight thereto in declining cancellation. He contended that the concession of bail, having been abused, merited recall, and placed reliance on cases of *Muhammad Younis V. Zameer Hussain Shah & 2 others* (2017 YLR 1238) [Supreme Court (AJ&K)], *Muhammad Farooq V. Muhammad Afzal and another* (2000 P.Cr.L.J 1680) [Shariat Court (AJ&K)], and *Zafar Iqbal & 2 others* (2021 SCMR 1909).

7. Per contra, learned counsel for Respondents No.1 and 2 maintained that the impugned order is a product of sound reasoning, rendered upon due consideration of the entire record, and that the respondents had, at no stage, transgressed the terms of their bail nor absconded from the proceedings, having appeared before the trial Court with unbroken regularity. He prayed for dismissal of both the Revision Application and the Criminal Miscellaneous Application.

8. Learned Deputy Prosecutor General, aligning with the impugned order, submitted that no illegality or material irregularity vitiates the findings of the trial Court.

9. Heard. Record perused.

10. Before embarking upon the merits, it is apposite to recapitulate the settled jurisprudential parameters governing cancellation of bail. It is axiomatic that the considerations germane to the grant of bail are qualitatively distinct from those attending its cancellation. Once a competent Court, after due judicial deliberation, has extended the concession of bail, such concession is not liable to be disturbed merely upon the existence of an alternative, equally plausible view of the merits. The Hon'ble Supreme Court of Pakistan, in *Sami Ullah and another* (2020 SCMR 1115), and *Saeedullah* (2023 SCMR 1397), has authoritatively held that cancellation is warranted only in exceptional circumstances namely, where the accused has abused the concession by absconding, tampering with prosecution evidence, intimidating witnesses, or violating bail conditions, or where the order granting bail is vitiated by illegality resulting in miscarriage of justice. Absent such exceptional circumstances, the concession, once granted, must endure.

11. Upon anxious consideration of the impugned order and the material on record, it emerges that Respondent No.1's admission to bail (28.12.2019) and Respondent No.2's subsequent admission thereto (18.03.2021) were both grounded in considerations, absence of specific role, hearsay-based prosecution case, absence of ocular evidence, that were duly available for judicial appraisal at the relevant time. It is further undisputed that the alleged occurrence dated 02.08.2018 was reported only on 04.08.2018, during which interval no report was lodged with police despite the complainant's purported knowledge of the death; instead, the complainant and her relatives proceeded independently to exhume the body before approaching the authorities. These circumstances, being antecedent to and contemplated within the original bail orders, cannot now be resurrected as "supervening" grounds for cancellation. As regards the Medical Board's opinion, attributing death to traumatic head injury from a hard and blunt substance, resulting in skull fracture, hemorrhage, and neurogenic shock, while such findings prima facie point to an unnatural, homicidal death, they do

not, without more, forge a nexus between the respondents and the commission of the offence. The evidentiary weight of such medical testimony remains a matter for determination by the trial Court upon full recording of evidence, and cannot, at this interlocutory stage, found a basis for recalling bail.

12. A perusal of the impugned order dated 21.05.2026 reveals that the learned trial Court duly considered the entire factual matrix, including antecedent proceedings before this Court, and concluded rightly, in my estimation that no fresh or supervening circumstance had been demonstrated to justify cancellation, the applicant's grievances being, in substance, matters touching the merits of the prosecution case properly reserved for trial. It bears emphasis that the prosecution evidence remains, as yet, unrecorded in its entirety, and the culpability of the accused persons awaits determination upon legally admissible evidence.

13. In light of the foregoing, I am persuaded that the applicant/complainant has failed to demonstrate any supervening circumstance or misuse of the bail concession by Respondents No.1 and 2. The impugned order, being free from illegality or material irregularity, does not warrant interference. Accordingly, the Criminal Revision Application and the Criminal Miscellaneous Application, being devoid of merit, stand dismissed.

14. Turning to the Criminal Transfer Application, the applicant seeks the transfer of Sessions Case No.167 of 2019 from the Court of the learned Additional Sessions Judge, Shahdadpur, to another Court of competent jurisdiction within District Sanghar.

15. Learned counsel for the applicant urged that the elaborate observations recorded by the trial Court while adjudicating the bail matters have engendered a legitimate apprehension in the complainant's mind that impartial adjudication may not be forthcoming were the trial to continue before the same forum, and

that the confidence of the litigants in the justice-delivery process would be better preserved through transfer.

16. Learned counsel for Respondents No.1 and 2 resisted the application, characterizing it as a dilatory tactic.

17. It is well settled that the power of transfer under Section 526, Cr.P.C., is to be invoked with circumspection, and only where the ends of justice so demand. In the present matter, the learned Additional Sessions Judge, Shahdadpur, has had repeated occasion to pronounce upon the bail proceedings and the Section 497(5) application, and although such observations were unquestionably tentative and confined to interlocutory disposal, the fact remains that detailed commentary touching the prosecution case has already found its way onto the record. To dispel any residual apprehension in the complainant's mind and to safeguard the sanctity of the trial process, the Criminal Transfer Application is allowed. Accordingly, Sessions Case No.167 of 2019, Re-(The State v. Bashir Ahmed and others), arising out of Crime No.79 of 2018, Police Station Shahpur Chakar, District Sanghar, is hereby withdrawn from the Court of the learned Additional Sessions Judge, Shahdadpur, and transferred to the Court of the learned District & Sessions Judge, Sanghar, who shall either retain seisin of the matter himself or entrust it to any other Court of competent jurisdiction for disposal in accordance with law. The transferee Court shall proceed to try the case independently, uninfluenced by any observation recorded either by the trial Court or by this Court in the present order, and shall endeavor to conclude the trial within a period of 90 days from receipt of this order, no unnecessary adjournment being granted to either party.

JUDGE

"Faisal"