

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT
MIRPURKHAS**

Crl. Bail Applications No. S-130 of 2026

Applicant: Abid Hussain son of Dad Muhammad (on bail)
Through Mr. Malik Bux Mari, Advocate.

Crl. Bail Applications No. S-139 of 2026

Applicants: 1. Raham Hussain son of Shah Bux,
2. Sardar Ali son of Ali Bux Laghari,
3. Ali Hassan son of Khemiso,
4. Asif Iqbal son of Muhammad Yousaf Rajput,
5. Sarfaraz Ahmed son of Ali Jan Shaikh.
Through M/s Muhammad Hashim Laghari
and Rizwan Ali, Advocates.

Complainant: Sher Ali son of Ahsan Ali,
Through M/s. Jamshed Laghari and Housh
Muhammad Mangi, Advocates.

The State: *Through* Mr. Shahzado Saleem A.P.G and
Sabir Hussain D.A.G.

Date of hearings: 22.07.2026
Date of order: 31.07.2026

O R D E R

KHALID HUSSAIN SHAHANI, J. – This order shall dispose of the connected bail applications filed on behalf of Abid Hussain Brohi, Raham Hussain Wassawano, Sardar Ali Laghari, Ali Hassan Laghari, Asif Iqbal Rajput and Sarfaraz Ahmed Shaikh, all police officials attached to Police Station Sinjhoru, arising out of Crime No. CC-SBNA/ACC-02 of 2026, registered at P.S. FIA Composite Circle, Shaheed Benazirabad, under Section 9 of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, read with Sections 302, 34, 109 and 342 of the Pakistan Penal Code, for the death, while in police custody, of Arshad Ali alias Arshoo Khorkhani.

2. The prosecution theory as set forth in the FIR is that that the complainant Sher Ali filed Criminal Miscellaneous Application No. 124 of 2026 before the learned 1st Additional Sessions Judge/Ex-Officio Justice of Peace, Sanghar, alleging that on 20.01.2026 at about 10:30 a.m. the applicants, along with three

unidentified police officials, forcibly removed his brother Arshad Ali from the otaq at their residence without warrant or lawful justification, and drove him away in a police mobile; that when the complainant and his cousin Sadam Hussain approached Police Station Sinjhor the same evening, custody of the deceased was denied; and that the family thereafter learnt, first through social media and later through official channels, that Arshad Ali had died in police custody, the police version being one of suicide, a version the complainant contends is negated by the visible firearm injuries on the body. The Postmortem Examination Report of the Medico Legal Officer, Dr. Ahmed Raza, Taluka Hospital Sinjhor, records that death occurred due to hemorrhage and shock caused by two ante-mortem firearm injuries which damaged the heart and lungs and were, in the ordinary course of nature, sufficient to cause death.

3. Mr. Malik Bux Mari, learned counsel for the applicant Abid Hussain contended that no incident as alleged in the FIR ever took place; that on the date and time in question the applicants, save Asif Iqbal, were on routine patrol at Kangpati Mori when two persons on a motorcycle, identified as Muzamil Ali Rajput and the deceased Arshad Ali, were signalled to stop but instead accelerated and opened fire upon the police party, whereafter both fled into a sugarcane field, Muzamil surrendering while the deceased, after threatening suicide, was heard to fire a single shot and was found with a firearm injury to the chest and a pistol lying beside him; that first aid was rendered and he was referred for treatment, eventually succumbing at Peoples Medical College Hospital, Nawabshah. In substantiation of this version and by way of documents, learned defence counsel placed on record certified copies of FIR No. 09 of 2026 under Sections 324, 353 and 34 P.P.C., FIR No. 10 of 2026 under Section 24 of the Sindh Arms Act, and FIR No. 11 of 2026 under Sections 325 and 511 P.P.C., all registered at P.S. Sinjhor against the deceased himself, contending that these three FIRs, being contemporaneous and unchallenged in their sanctity, establish the true genesis of the occurrence as an encounter and a subsequent act of suicide, rather than a case of custodial killing. Learned counsel further produced the Criminal Record Office extract

of the deceased, urging that he was a habitual offender involved in more than twenty-eight FIRs registered at various police stations of District Sanghar, and that this antecedent history lends credence to the defence version that he took his own life out of fear of apprehension rather than being killed in custody. On behalf of applicant Abid Hussain, a plea of *alibi* was raised, supported by an application for leave sanctioned by the SSP Sanghar for 20.01.2026 to 21.01.2026, coupled with call data record and photographs said to place him at Karachi on the relevant date, it being contended that his physical absence from the scene renders his implication impossible.

4. Mr. Muhammad Hashim Laghari and Mr. Rizwan Ali, learned counsel for the remaining applicants filed application for exemption from personal appearance of applicant, Raham Hussain on humanitarian and medical grounds, accompanied by medical record, it being urged that his advanced ailment warranted indulgence and that the concession of bail be extended without compelling personal attendance. Learned counsel further submitted that applicant Sarfaraz Ahmed was, on the relevant date, posted with the District Intelligence Branch and not at the police station, while applicant Asif Iqbal was discharging duties as Writer Head Constable/Munshi, engaged in record-keeping and unconnected with the patrolling party, and had in fact been occupied in lodging an unrelated FIR bearing No. 08 of 2026 at the material time. In support of the legal proposition that the FIR is unsustainable, learned counsel relied principally upon case of Mst. Sughran Bibi¹, contending that since three FIRs already stood registered against the deceased in respect of the same occurrence, and their sanctity remained unchallenged by the complainant, a fourth and parallel FIR against the applicants for the identical occurrence was barred in law, and the matter, in any event, required further inquiry within the contemplation of Section 497(2) Cr.P.C.

5. Learned D.A.G and A.P.G duly assisted by the learned counsel for the complainant, Mr. Jamshed Laghari and Mr. Housh

¹ Mst. Sughran Bibi v. The State (PLD 2018 Supreme Court 595),

Muhammad Mangi, opposed the applications with equal force. It was submitted that the applicants stand specifically named in the FIR, and that it is an admitted position, drawn from the defence's own narrative, that the deceased was chased, encircled and cornered by the police party before receiving the fatal injury, thereby falling squarely within the definition of "custody" as engrafted in Section 2(f) of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, which expressly extends to *"all situations where a person is detained or deprived of his liberty by any person, including a public official... irrespective of legality of nature and any place of such detention,"* and further within the meaning of *"custodial death"* defined in Section 2(h), which includes death occurring in a public place, or while a person is being arrested, taken into detention, or questioned. Reliance was placed upon Sections 6, 7, 8 and 9 of the Act of 2022: Section 6, vesting exclusive trial jurisdiction in the Court of Sessions notwithstanding any other law; Section 7, mandating intimation to the competent authority and suspension or transfer of the accused public official upon a prima facie finding; Section 8, prescribing punishment for torture as cognizable, non-compoundable and non-bailable; and Section 9, prescribing for custodial death the same punishment as under Section 302 P.P.C., the offence being cognizable and non-bailable. It was submitted that the statute, by virtue of its overriding effect under Section 16, notwithstanding anything contained in any other law, constitutes a special and self-contained code governing custodial death, and that the plea founded on Sughran Bibi case is wholly misconceived, since that authority addresses the mischief of successive FIRs before the same investigating agency in respect of the same occurrence, and was never intended to shield police officials, themselves accused of causing a custodial death, from a specialised statutory inquiry merely because their own department had registered FIRs against the very man who died in their custody. In this behalf, reliance was placed upon the unreported judgment dated 06.03.2024 passed in Writ Petition No. 1359 of 2024 (Re: Zubaida Qureshi v. Ex-Officio Justice of Peace and others) by the Lahore High Court, Bahawalpur Bench, wherein it was authoritatively held that the Act of 2022 is *lex specialis*, and that even where local police have registered an FIR,

a complaint under the Act remains competent before the FIA where torture or custodial death is alleged, the narratives of the police and the victim's family being subject to separate legal frameworks and investigative agencies, such that Sughran Bibi case presents no impediment.

6. Learned counsel for the complainant further relied upon case of Rana Muhammad Arshad², Ghulam Raza Soomro³, wherein leave to appeal was declined against refusal of bail to a police official where judicial inquiry established that the deceased had died of injuries sustained in custody, the involvement of the accused being held in case of Abdul Qadir⁴, where bail was declined to police officials in an alleged fake encounter, it being held that a mere administrative recommendation for closure of the case does not suffice to extend pre-arrest bail where sufficient material connects the applicants with an offence falling in the prohibitory clause held in case of Wazir Ali⁵, holding that a plea of *alibi* is a matter reserved for evidence at trial and cannot be conclusively determined at the bail stage, and that a call data record (CDR) does not, by itself, establish the whereabouts of the accused since a mobile telephone is not inseparable from its owner. As held in case of Khair Muhammad⁶, in which the Honourable Supreme Court examined the evidentiary value of call data records and held that such records, to carry evidentiary weight, must bear proper certification and an unbroken chain of custody from the service provider to production in court, absent which they remain of doubtful reliability and cannot, at the bail stage, be treated as conclusive proof of an *alibi*; Asmatullah Khan⁷, emphasizing that mere production of documentary material by an accused, without its truth being tested through the ordinary process of evidence, cannot be permitted to displace *prima facie* material collected during investigation;

² Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427).

³ Ghulam Raza Soomro v. The State (2000 SCMR 1645),

⁴ Abdul Qadir and 9 others v. The State (2020 YLR Note 29 (Sindh, Larkana Bench).

⁵ Wazir Ali v. The State (2023 YLR 1582) [Sindh, (Sukkur Bench)].

⁶ Khair Muhammad and another v. The State (2025 SCMR 1599).

⁷ Asmatullah Khan and others v. The State and others (2024 PLD Supreme Court 1119).

Habibullah Chandio⁸ reiterating that offences involving custodial violence, given their grave and aggravated character and the complete subjugation of the victim to the power of the State machinery, warrant a stricter approach at the bail stage than ordinary offences. Additionally, learned counsel for the complainant and the learned ADL, FIA, placed reliance upon the unreported order dated 19.05.2025 passed in Cr. B.A. No. 912 of 2025, the unreported order dated 03.11.2025 passed in Constitutional Petition No. S-1193 of 2025, the unreported order dated 08.12.2025 passed in CP No. D-2066 of 2025, the unreported judgment dated 30.05.2025 passed in Writ Petition No. 61733-H of 2023, and the unreported order dated 04.07.2024 passed in Cr. B.A. No. S-709 of 2025, all of which, it was submitted, consistently hold that pre-arrest bail is to be refused to police officials facing allegations of custodial death or extrajudicial killing where the material collected during investigation prima facie connects them with the occurrence, and that the special jurisdiction of the FIA under the Act of 2022 is not liable to be defeated by parallel proceedings initiated by the police against the deceased.

7. Heard & Perused.

8. Record demonstrates that accused Abid Hussain Brohi, SDPO, Raham Hussain alias Raham Ali Waswano, SHO, Ali Hassan Brohi, ASI, Asif Iqbal, WHC, Sarfaraz Nawaz Sheikh, PC, and Sardar Ali Laghari, HC, all were attached to Police Station Sinjhoru at the relevant time, who stand named in above said crime. It must be stated at the very outset, and this Court considers it necessary to reiterate this settled proposition before descending into the facts, that the concession of bail before arrest is an extraordinary relief, rooted in equitable considerations, and is not to be extended as a matter of course or in every run of the mill case; it is meant to protect the liberty and dignity of a person against a mala fide and vindictive prosecution, and cannot be converted into a device by which a person, howsoever apprehensive of arrest, is permitted to short-circuit the normal course of investigation. This principle finds its

⁸ Habibullah Chandio v. The State (2025 MLD 872) [(Sindh, Larkana Bench)].

most authoritative articulation in supra case of *Rana Muhammad Arshad*, where the Honorable Supreme Court, laying down the governing framework for the exercise of jurisdiction under Section 498 of the Code, held that the concession is confined to cases in which a good prima facie ground is shown for bail on the offence alleged, coupled with a demonstration that arrest, if allowed to take its course, would in all probability proceed from an ulterior and not a bona fide purpose, or would cause irreparable harm to the applicant; the same rigorous standard, this Court notes, has been consistently reiterated by the Superior Courts, including in *Kamran Ataullah*⁹, where it was held that pre-arrest bail, being a safety valve for personal liberty and not an alternative to post-arrest bail, cannot be extended in cases of heinous character absent clear and cogent material establishing false implication, mala fide being a matter to be affirmatively proved and not presumed from the bare assertions of an applicant. Tested against this standard, none of the six applicants before this Court has placed any material capable of dislodging the prima facie connection drawn by the investigation between them and the death of Arshad Ali; no enmity, rivalry or extraneous motive on the part of the complainant, who is the deceased's own brother, has been shown, and the plea of malicious prosecution rests on nothing beyond assertion.

9. Turning initially the discussion over the case law relied upon by learned counsel for the applicants, this Court finds the reliance on case of *Mst. Sughran Bibi* to be wholly misplaced. That authority addresses the mischief of successive FIRs being registered by the same investigating machinery in respect of the same occurrence, so as to prevent multiplicity of parallel investigations by identical authorities into an identical incident; it was never intended to permit police officials, themselves accused of causing a custodial death, to shield their own conduct from a specialized statutory inquiry merely because their own department had, within the same window of time, registered FIRs against the very man who died in their custody. The Torture and Custodial Death (Prevention and Punishment) Act, 2022 is a special enactment addressing a distinct

⁹ *Kamran Ataullah v. The State* (2021 SCMR 449).

evil; Section 5(1) thereof vests exclusive jurisdiction in the Federal Investigation Agency, "*notwithstanding anything contained in any other law for the time being in force*," to investigate complaints of custodial torture and custodial death against public officials, and Section 16 confers upon the entire statute an overriding effect over all other laws. This *lex specialis* character was recognized and applied by the learned Bench of the Lahore High Court, Bahawalpur, in *Re: Zubaida Qureshi v. Ex-Officio Justice of Peace and others* (Writ Petition No. 1359 of 2024), holding in terms directly applicable here that even where the local police have already registered an FIR, a complaint under the Act of 2022 remains competent before the FIA where torture or custodial death is alleged, the narratives of the police and the victim's family being subject to entirely separate legal frameworks and investigative agencies, such that Sughran Bibi presents no impediment. The FIRs bearing Crime Nos. 09, 10 and 11 of 2026, registered by the Sinjhoru police against the deceased himself, therefore cannot operate to erase, dilute or substitute the FIR lodged by the complainant under the special statute; if anything, their contemporaneous registration by officials who are themselves named as accused in the custodial death case, and who, per the interim charge sheet, appear to have permitted or authored those very FIRs to cover up the occurrence, deepens rather than dispels suspicion. Upon the above material, and applying the guidelines laid down by the Divisional Bench of this court, in the unreported judgment dated 08.12.2025 in Constitutional Petition No. D-2066 of 2025, the learned Ex-Officio Justice of Peace directed registration of the case with the Federal Investigation Agency under Section 154 Cr.P.C., which came to be registered against the six named applicants on 28.01.2026.

10. Further anxious consideration is the rival contentions and the entire material placed on the record, this Court is of the view that the plea of *alibi* raised on behalf of applicant Abid Hussain, though supported by a leave order, call data record and photographs, cannot be accepted as conclusive at this stage. It is by now well settled, as held in *supra* case of Wazir Ali and reinforced by the standard laid down in *supra* case of Khair Muhammad and

another regarding the certification and chain-of-custody requirements for call data records(CDRs), that such material requires independent verification through evidence, a mobile telephone not being inseparable from its owner and photographs being susceptible to manipulation or misdating; the plea, therefore, remains a matter for trial and does not, without more, dislodge the prima facie material naming the applicant as the senior-most officer present at the commencement of the operation that culminated in the deceased's death. Similarly, the applications for exemption from personal appearance filed on humanitarian and medical grounds on behalf of Raham Hussain, though accompanied by medical record, do not constitute a ground for grant of the substantive relief sought, exemption from appearance being a procedural indulgence entirely distinct from the merits of entitlement to bail, and it appears, on a plain reading of the record, that such application has been moved in apprehension of an adverse order rather than owing to any genuine incapacity.

11. As regards the FIRs bearing Crime Nos. 09, 10 and 11 of 2026 registered against the deceased himself, and the Criminal Record Office extract reflecting his antecedents in more than two dozen cases, this Court finds that such material, even taken at face value, does not absolve the applicants of the specific and grave allegation that the deceased died while under police pursuit and restraint. A criminal record, however extensive, confers upon no police official the license to inflict a fatal injury upon a person once he is within their power; at best, such antecedents may bear upon appreciation of certain defence pleas or upon sentencing at the conclusion of trial, but they cannot convert an admitted death in custody into a matter of mere further inquiry. The reliance placed upon case of *Mst. Sughran Bibi* is, for the reasons already discussed and as authoritatively clarified in the unreported judgment dated 06.03.2024 in Writ Petition No. 1359 of 2024, misconceived; the Act of 2022 being *lex specialis* with overriding effect under Section 16, the existence of FIRs registered by the police against the deceased, on the initiative of officials who are themselves named as accused in the custodial death case, cannot operate to defeat or foreclose the

specialised inquiry mandated under Sections 5 and 6 of the Act, the two sets of proceedings being governed by entirely separate legal and investigative frameworks, one before the local police and one exclusively before the Federal Investigation Agency under the supervision of the National Commission for Human Rights.

12. Section 2(f) and 2(h) of the Act of 2022 define "custody" and "custodial death" in terms wide enough to comprehend the very sequence of events admitted by the applicants themselves, namely, that the deceased was chased, surrounded, and reduced to a position from which escape was impossible, before he sustained the firearm injuries that caused his death; whether the fatal shot proceeded from his own hand, as claimed by the defence, or from a member of the police party, as alleged by the prosecution, is a matter that squarely requires appreciation of evidence at trial and cannot be resolved on the tentative material available at the bail stage. The doctrine of collective responsibility, applicable in cases of custodial violence and recognised in the line of authorities cited on behalf of the complainant, including cases of Ghulam Raza Soomro and Abdul Qadir, permits proceedings to continue against all members of a police party shown *prima facie* to have participated in the encirclement and pursuit that culminated in a custodial death, leaving individual attribution of the specific fatal act to be determined upon a full trial. The offence, being punishable under Section 9 of the Act of 2022 with the same punishment as prescribed under Section 302 P.P.C., and being expressly declared cognizable and non-bailable, falls squarely within the prohibitory clause of Section 497 Cr.P.C., and no exceptional ground of *mala fide*, false implication, or genuine further inquiry, as required under *supra* case of *Rana Muhammad Arshad* and *Mst. Inayat Khan*¹⁰ has been made out by any of the six applicants.

13. This conclusion stands entirely in consonance with the law laid down by the Divisional Bench of the Honourable High Court of Sindh in the unreported judgment dated 08.12.2025 in Constitutional Petition No. D-2066 of 2025, which itself furnished

¹⁰ *Mst. Inayat Khan and others v. Muhammad Ramzan* (2012 SCMR 229),

the guidelines under which the present FIR was registered, holding that the Federal Investigation Agency possesses exclusive jurisdiction over complaints of custodial death against public officials and that objections touching the mode or forum of registration are premature at the investigative stage, to be agitated, if at all, before the trial court upon a full appraisal of evidence. It is equally consonant with the reasoning of the Divisional Bench in the unreported order in Constitutional Petition No. D-1613 of 2025, wherein a similar technical objection raised by police officials seeking to escape a custodial-death investigation was held to amount to no more than a curable, formal defect incapable of displacing the gravity of the underlying allegation. Read conjointly with the unreported orders in Cr. B.A. No. 912 of 2025, Constitutional Petition No. S-1193 of 2025, Writ Petition No. 61733-H of 2023, and Cr. B.A. No. S-709 of 2025, all cited on behalf of the complainant, the consistent thread running through this body of jurisprudence is that police officials named in a custodial death case, where the material collected during investigation *prima facie* establishes that the deceased was within their power or control at the time he sustained fatal injury, are not entitled to the extraordinary indulgence of pre-arrest bail merely by producing parallel FIRs, antecedent criminal history of the deceased, or unverified pleas of *alibi* and medical exemption.

14. For the foregoing reasons, this Court finds that the applicants-accused have failed to demonstrate any exceptional ground warranting the grant of bail before arrest in a case falling within the prohibitory clause of Section 497 Cr.P.C., and that the plea for further inquiry under Section 497(2) Cr.P.C. is equally unavailable, sufficient material having been placed on record to raise a reasonable belief of their involvement in the commission of the offence. The ad-interim pre-arrest bail already granted to the applicants-accused Abid Hussain Brohi, Raham Hussain Wassawano, Sardar Ali Laghari, Ali Hassan Laghari, Asif Iqbal Rajput and Sarfaraz Ahmed Shaikh is accordingly recalled, and the bail applications bearing Nos.130 and 139 of 2026 are hereby dismissed as being devoid of merit. The observations made herein

are tentative in nature, confined to the disposal of the question of bail, and shall not prejudice the case of either party at trial, which shall proceed and be concluded strictly within the time frame contemplated under Section 13 of the Torture and Custodial Death (Prevention and Punishment) Act, 2022.

J U D G E

Adnan Ashraf Nizamani