

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1427 of 2026

[Basheer Ahmed Malik v. Province of Sindh and others]

Before:
Justice Arbab Ali Hakro
Justice Nisar Ahmed Bhanbhro

Petitioner by : Mr. Inamullah Kalwar, Advocate

Respondents No.1 to 5 by : M/s Saeed Ahmed Wassan, Assistant Advocate General Sindh and Imran Mobeen Khan, Assistant Prosecutor General

Respondent No.6 by : Mr. Khadim Hussain Malik, Advocate (filed vakalatnama)

Date of Hearing : **30.09.2026**

Date of Decision : **30.09.2026**

ORDER

ARBAB ALI HAKRO, J. – The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and seeks the following reliefs, reproduced verbatim:

- a) *To direct the respondent No.2 & 3 to appoint any honest police officer not below the rank of DSP, who may conduct the free and fair-investigation of the FIR bearing Cr. No.59/2024, Offence U/S 302, 148, 149 & 114 PPC OF PS Adilpur, District Ghotki @ Mirpur Mathelo, then furnish such report before this Honourable Court and after that this Honourable Court may graciously be pleased to pass an appropriate order.*
- b) *To restrain the learned trial Court/Additional District and Sessions Judge-I (MCTC) Ghotki in Cr. Case No.183/2026 “Re-The State Vs Shabir Malik and others” form further proceeding of the trial, till the final disposal of this Petition.*
- c) *To grant any other relief, which this Honourable deems fit and proper in circumstances of the case.*

2. The facts relevant to deciding this petition are as follows. On 19.03.2024, Respondent No.6 lodged FIR No.59/2024 at Police Station Adilpur. He alleged that on 18.03.2024, his brother Gulab Malik was murdered by a firearm at the hands of the nominated accused Shabbir, Nadir Ali, Bashir (the present petitioner), Mst. Haseena (the widow of the deceased) and an unidentified person. The unidentified person was later identified by the complainant party as Ali Nawaz, son of Pehlwan Malik. The alleged motive is matrimonial enmity arising from the free-will marriage contracted between Mst. Haseena and the deceased in 2015.

3. Notice was issued to the respondents. Respondent No.2 (DIGP Sukkur) submitted a report through the DSP/Complaint Cell, stating that the office records had been examined and that no application from the petitioner had been received. Nevertheless, the matter had been forwarded to the SSP Ghotki after receipt of this petition. Respondents No.4 and 5 (the SHO and the Investigating Officer) submitted progress reports dated 30.09.2026, narrating the investigation. The petitioner filed a statement dated 30.09.2026, placing on record the diary sheets of Sessions Case No.183/2026 from 08.06.2026 to 16.09.2026; the statement and order dated 31.08.2026; the vakalatnama and order dated 08.09.2026; and copies of the examination-in-chief of the complainant and his witnesses.

4. The petitioner claims that he has been falsely implicated by his relatives out of enmity over matrimonial affairs, and his main plea is an alibi. He states that on 18.03.2024, from about 08:30 a.m. to 01:00 p.m., he was present at the Court premises at Mirpur Mathelo with his advocate, Mr. Mubarak Ali. He relies on CCTV footage of the Court premises, a recorded telephone call on 18.03.2024 between his wife and Mr. Mubarak Ali stored on the latter's mobile phone, photographs, social media and press reports, and the statements of defence witnesses, all of which, according to him, the Investigating Officer failed to collect. He states that, through his wife, he applied to the SSP Ghotki on 14.01.2026, to the DIGP Sukkur on 20.01.2026, and to the Special Judge, Mirpur Mathelo, on 30.01.2026, without result. He then filed Cr. Misc. Application No.1571/2026 before the learned Sessions Judge/Ex-officio Justice of Peace, Ghotki. That application was transferred to the learned Additional Sessions Judge-I/Ex-officio

Justice of Peace (MCTC), Ghotki, and dismissed by order dated 01.08.2026. He has now approached this Court.

5. According to the reports of Respondents No. 4 and 5, the Investigating Officer inspected the scene of occurrence, prepared the site mashirnama, and secured three empty 30-bore bullets from the spot. The Forensic Science Laboratory, Larkana, vide report dated 08.04.2024, confirmed that the bullets were fired from a 30-bore firearm. Blood-stained earth and the deceased's clothes were sent to the Chemical Examiner, whose report dated 16.04.2024 confirmed the presence of human blood. The post-mortem examination of the deceased was conducted on 18.03.2024 by the Medical Officer, who opined that the cause of death was haemorrhagic shock resulting from firearm and sharp-cutting weapon injuries, which were ante-mortem and homicidal in nature. The statements of the eyewitnesses were recorded under Section 161, Cr.P.C. The accused could not be arrested despite raids and were declared proclaimed offenders after compliance with Sections 87 and 88, Cr.P.C. A challan under Sections 512/173, Cr.P.C. was submitted before the learned Judicial Magistrate, Ghotki. The petitioner was arrested on 13.01.2026. A supplementary challan was submitted on 14.01.2026, and he has since remained in judicial custody at District Prison, Ghotki.

6. The case was sent up to the Court of Session and is pending as Sessions Case No. 183/2026 before the learned Additional Sessions Judge-I (MCTC), Ghotki, where the charge was framed on 08.06.2026. As per the diary sheet dated 16.09.2026, the petitioner was produced via video link, and the examination-in-chief of the complainant and three prosecution witnesses, namely Manzoor Ahmed, ASI Akbar Ali Shahani and WHC Safdar Ali Malik, was recorded at Exhibits 08 to 11. The diary sheet further records that their cross-examination was reserved because the counsel engaged by the petitioner was not cooperating with the Court in the conduct of the trial and repeatedly sought adjournments on the ground that he wanted a re-investigation of the case. An advocate had been engaged for the petitioner at State expense, and the case was adjourned to 23.09.2026 for evidence and cross-examination.

7. We have heard learned counsel for the petitioner, learned counsel for respondent No. 6, learned Assistant Advocate General, Sindh, and learned Assistant Prosecutor General, and have also perused the material on record.

8. The petitioner seeks a re-investigation by a fresh officer after the challan, cognizance, the framing of the charge, and the commencement of evidence. Jurisdiction under Article 199 is extraordinary and discretionary. It is not a substitute for the statutory trial process, nor can it be used to have a disputed defence adjudicated or to re-direct the manner of investigation while the trial is under way. There may be rare cases in which this Court can interfere with an investigation, such as manifest mala fides or a complete failure to perform a statutory duty, but no such case is made out here for the reasons below.

9. Investigation has been completed, and a challan and a supplementary challan have been submitted. The learned Magistrate took cognizance, and the case was sent up to the Court of Session. The charge was framed on 08.06.2026, and the prosecution has begun to lead evidence. Ordering a fresh investigation at this stage would disrupt a trial already in progress. It would also delay a murder trial in which the petitioner is the sole accused in custody, and would run counter to the guarantee of a fair trial within a reasonable time under Article 10-A. The material the petitioner complains was not collected is not lost to him. He is entitled to bring it before the trial Court.

10. The petitioner's central ground is that he was elsewhere at the time of the incident. This is a plea of fact which must be pleaded and proved by evidence, and it can be tested only through the process of trial. The burden of proving a plea of alibi lies upon the accused who sets it up, as the fact is especially within his own knowledge¹ and the investigating agency is under no duty to establish it for him. The reports of the Investigating Officers record that at no stage during the investigation did the petitioner or anyone on his behalf appear before them, advance a plea of alibi, or produce CCTV footage or any other material. The petitioner disputes that assertion, and it cannot be resolved in writ jurisdiction without recording evidence. We make

¹ Article 122 of the Qanun-e-Shahadat Order, 1984.

no finding on it. Nor are we persuaded that the petitioner's plea, even if taken at its highest, entitles him to a re-investigation as of right. Even on the petitioner's own case, the first of his applications to the police authorities is dated 14.01.2026. That is after the investigation was over and the challan submitted, and one day after his arrest. The opinion of the police on guilt or innocence does not bind the trial Court, which must decide on the evidence before it.

11. The petitioner's request for re-investigation was considered and dismissed by the learned Additional Sessions Judge-I/Ex officio Justice of Peace on 01.08.2026 by a reasoned order. The learned Judge noted that the petitioner could have produced all his evidence at the relevant stage of the trial, particularly when his statement under Section 342 Cr.P.C. was recorded, and that sending the case back to the police after the charge was framed would only cause delay. The petitioner's prayer does not challenge that order, and no illegality or jurisdictional defect in it has been pointed out to us. The petitioner cannot obtain, by the same relief in a different form, what has already been declined by a forum of competent jurisdiction for sound reasons.

12. The law affords the petitioner an adequate opportunity to present his defence before the trial Court. The prosecution witnesses, whose cross-examination has been reserved, can be cross-examined; the petitioner may apply to the trial Court under Sections 94 and 540, Cr.P.C., for the production of CCTV footage and other documents, and for the summoning of defence witnesses, including Mr. Mubarak Ali, advocate; his statement under Section 342, Cr.P.C., will afford him a further opportunity to state his defence and to indicate whether he wishes to produce evidence, and he may lead defence evidence; and if the trial Court considers that there is no probability of conviction on the prosecution evidence, the petitioner may invoke Section 265-K, Cr.P.C.

13. The request to stay proceedings in Sessions Case No. 183/2026 cannot be granted. The trial of a serious charge cannot be indefinitely postponed on the basis of a claim for re-investigation that is not entitled to succeed. The diary of 16.09.2026 itself records that the proceedings have

been delayed by adjournments sought on the very ground that re-investigation is being pursued. A stay would perpetuate that delay at the expense of the right to an expeditious trial of the petitioner himself, of the complainant, and of the administration of justice.

14. The allegation that Respondent No.6 acted in mala fides and that the Investigating Officer afforded him undue favour is not supported by any material beyond the petitioner's own assertions. The identification of Ali Nawaz as the unidentified accused and the filing of a supplementary challan are matters of evidence for the trial Court to examine in due course. No ground for interference by this Court has been made out.

15. We hold that the petition does not merit the grant of discretionary relief under Article 199. It seeks to re-open an investigation that has been completed, at a stage when the trial has begun, on the basis of a plea of fact that the trial Court must decide on evidence. The petitioner has an effective and adequate remedy before the trial Court, which he may avail. For these reasons, the petition is **dismissed**, along with any pending application.

16. It is clarified that nothing observed hereinabove shall be construed as an expression of opinion on the merits of the charge, on the plea of alibi, or on any application that the petitioner may make before the learned trial Court, each of which shall be decided on its own merits and on the evidence, uninfluenced by any observation made herein.

J U D G E

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Abdul Basit