# THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

## Criminal Misc. Application No. S-418 of 2026

*[Sikandar Ali Choliyani Vs. SHO, P.S Karampur & another]*

Fresh Case

1. *For orders on M.A No.5818/2026.*
2. *For orders on office objections.*
3. *For orders on M.A No.5819/2026.*
4. *For hearing of Main Case.*

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| **Applicant** | **:** | Through Mr. Saeed Ahmed B. Bijarani, Advocate |
| **Date of Hearing** | **:** | **16-11-2026** |
| **Date of Order** | **:** | **16-11-2026** |

## O R D E R

**ARBAB ALI HAKRO, J;-** Through this application under section 561-A of the Code of Criminal Procedure, 1898 ("**Cr.P.C.**"), the applicant has called in question the order dated 12.02.2021 ("**the impugned order**") passed by the learned Civil Judge and Judicial Magistrate, Tangwani ("**the Magistrate**") in Crime No.01 of 2021 of Police Station Karampur. By that order, cognizance was taken against all the persons nominated in the FIR; the applicant, whose name was placed in column No.2 of the challan, was joined as an accused and non-bailable warrants were issued against him. In the alternative, he seeks conversion of the non-bailable warrants into bailable warrants.

2. The FIR was lodged on 10.01.2021 by Mst. Zadi Khatoon under Sections 302, 337-H(2), 148 and 149 PPC. She alleged that on 09.01.2021 at about 6:00 p.m., fifteen nominated persons and two unknown persons, armed with Kalashnikovs, intercepted her party near village Abdul Hakeem Jaffari, on account of previous murderous enmity, and shot dead her grandsons, Sain Bux alias Babo and Mir Hazar alias Jameel. The applicant is named among those who fired at Sain Bux. During the investigation, certain persons stated that the applicant and four others were attending a khairat at the relevant time. On that basis, the Investigating Officer placed their names in column No. 2 and submitted the challan under Section 512 Cr.P.C., showing the remaining accused as absconders. The Magistrate did not agree

and passed the impugned order. The case is now pending before the learned 1st Additional Sessions Judge, Kandhkot ("**the trial court**").

3. Learned counsel for the applicant contends that the applicant was found innocent by the police on his plea of alibi; that the Magistrate failed to apply his mind and could not join the applicant in a case triable by the Court of Session; and that, in any event, summons or bailable warrants ought to have been issued in the first instance. He relies on the Supreme Court order in Criminal Petition No. 105-K of 2002.

4. I have heard learned counsel and gone through the record.

5. The opinion of the police is not binding on the court. It was settled in ***Falak Sher***[1] that a Magistrate may take cognizance under section 190(1)(b) Cr.P.C. against a person whose name appears in column No. 2 of the challan. The rule was restated in ***Safdar Ali***[2], where it was further held that such a person may be summoned to face trial without any evidence being recorded first, and that the Magistrate, who is not deciding the case, is not required to write an exhaustive order.

6. The impugned order meets that standard. The Magistrate heard the prosecutor and the Investigating Officer, reviewed the police papers, and noted that the applicant was nominated in the FIR with the role of firing at the deceased, and that the eyewitnesses supported the complainant in their statements under Section 161 Cr.P.C. The claim that the applicant was elsewhere is an alibi plea. It is a defence to be raised and proved before the trial court, and it cannot be accepted at the stage of cognizance on the basis of statements recorded by the police. The order cannot be described as mechanical or without reasons.

7. Nor did the Magistrate exceed his powers, as the offence is triable by the Court of Session. Cognizance is taken of the offence, not of the offender or of the case as a whole. A Magistrate who takes cognizance of an offence exclusively triable by the Court of Session is bound to send the whole case to that Court and cannot send it only against those shown in column No. 3[3]. That is what was done here.

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[1] *Falak Sher v. The State* PLD 1967 SC 425
[2] *Safdar Ali v. Zafar Iqbal* 2002 SCMR 63
[3] *Raja Khushbakhtur Rehman v. The State* 1985 SCMR 1314

8. As to the process, Section 204 Cr.P.C. directs that it follow the fourth column of the Second Schedule, under which a warrant ordinarily issues in the first instance for an offence under Section 302 PPC. In ***Luqman Ali*** [4], a person let off in column No. 2 of a murder challan was joined as an accused, and non-bailable warrants were issued against him. The Supreme Court held that such process may issue to him once he is made an accused, and that, whatever the manner of his appearance, he can be released in a non-bailable offence only on bail granted under Section 497 or 498 Cr.P.C. Conversion of the warrants would thus be of no real consequence. The order in Criminal Petition No. 105-K of 2002 does not advance the applicant's case. As reproduced in the memo, it affirms the power of the court to summon persons not sent up by the police, and the process was modified there, with the consent of the complainant and the State, on an undertaking to surrender within two weeks. Nothing in the present application shows that the applicant has appeared before the trial court at any time since the impugned order.

9. There is a further difficulty. The impugned order was passed on 12.02.2021, and this application was presented on 02.11.2026, more than five years and eight months later. Neither the memo nor the affidavit offers any explanation, and no revision was preferred. The inherent jurisdiction is not an alternative or substitute for the remedies expressly provided by the Code, nor is it to be used to bypass the trial court[5]. The case is pending before the Court of Session, where bail and an application under section 265-K Cr.P.C. are open to the applicant.

10. For these reasons, no case for interference under section 561-A Cr.P.C. is made out. The application is **dismissed** *in* ***limine***, and the listed applications stand disposed of. The applicant may surrender before the trial court and seek bail or any other remedy available to him under the law, which shall be decided on its own merits. The observations above are tentative and shall not prejudice either party at the trial.

**JUDGE**

Zulfiqar

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[4] *Luqman Ali v. Hazaro* 2010 SCMR 611
[5] *Muhammad Farooq v. Ahmed Nawaz Jagirani* PLD 2016 SC 55