THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.07 of 2025

Applicants	:	Muhammad Anwar & another through Mr. Raj Ali Wahid Kunwar, advocate
Respondent No.1:		The State through Mr. Mumtaz Ali Shah, A.P.G. a/w P.I. Javed Akhtar, P.S. Peerabad
Respondent No.2:		Malik Zahid, Complainant in person.
Date of hearing	:	04-03-2025
Date of Judgment:		04 -03-2025

JUDGMENT

Jan Ali Junejo, J.-- The present Criminal Revision Application has been preferred by the Applicants (accused), Muhammad Anwar and Husnain, challenging the Order dated 06-01-2025 (here-in-after referred to as the *Impugned Order*) passed by the Court of learned IIIrd Additional Sessions Judge, Karachi-West (here-in-after referred to as the learned "Trial Court") in Sessions Case No. 242/2024 (The State vs. Muhammad Anwar and another), whereby the Applicants' application under Section 265-F(7) Cr.P.C., read with Sections 94, 540, and 510 Cr.P.C., and Article 10-A, of the Constitution of Islamic Republic of Pakistan seeking a direction to the Sindh Forensic DNA and Serology Laboratory (SFDL) for obtaining and matching a DNA profiling, was dismissed.

2. The Applicants are facing trial in Sessions Case No. 242/2024, arising out of FIR No. 400/2023, registered under Sections 302, 324, and 34 PPC at P.S. Peerabad, Karachi. According to contents of the F.I.R. lodged by Malik Zahid at PS Peerabad on 25.06.2023 at 1:30 AM, the complainant alleged that on 23.06.2023 at 11:30 PM, while he and his brother Malik Shahid were returning home after closing their electronics shop, they were attacked near their house by Muhammad Anwar and his son Hasnain, who were sitting outside their residence. Muhammad Anwar, armed with a knife, and Hasnain, wielding a sharp-edged object, assaulted both brothers, causing serious injuries. Two unidentified individuals, armed with dandas, also joined in, beating Malik Shahid on the head and body. Malik Shahid sustained multiple injuries, including stab wounds below the chest and severe injuries to his face, left arm, and head, causing him to collapse. Witnesses Muhammad Hayat and Muhammad Jameel observed the attack. Malik Shahid was rushed to Abbasi Shaheed Hospital and later shifted to Jinnah Hospital, where he succumbed to his injuries during surgery. The complainant accused Muhammad Anwar, Hasnain, and two unidentified individuals of attacking them due to personal enmity, injuring him, and murdering his brother Malik Shahid, requesting legal action against them.

3. During the trial, the Applicants moved an application under Section 265-F(7) Cr.P.C., requesting the Court to direct SFDL to obtain a DNA profile from Hasnain's clothes and match it with the blood stains found on Anwar's shalwar kameez. The defense contended that the DNA report (Exh. 8/F) did not include Hasnain's DNA profile, which was crucial to corroborate the applicants' claim that the blood on his clothes resulted from hugging Hasnain at a clinic. The

prosecution opposed the application, arguing that it was filed at a belated stage with the intent to delay proceedings.

4. The learned trial Court dismissed the application, holding that Section 265-F(7) Cr.P.C. only allows the issuance of process for summoning witnesses or documents and does not empower the Court to order further investigation. Aggrieved by this order, the applicant has preferred the present Criminal Revision Application.

5. The learned counsel for the Applicants has argued that learned trial Court misinterpreted Section 265-F(7) Cr.P.C., which allows the defense to summon evidence crucial for a fair trial, and erroneously rejected the request for DNA profiling that could support the applicants' stance. He further argues that the DNA report (Exh. 8/F) lacks Hasnain's DNA profile, making it essential to compare the blood stains on Anwar's shalwar kameez to establish that they resulted from a hug at the clinic rather than an attack. He submits that relevant judicial precedents, including 2015 YLR 1776, PLD 2011 Federal Shariat Court 114, and 2017 MLD 1611, affirm the right of the accused to procure and present all necessary evidence in their defense. He asserts that rejecting the DNA profiling request at this stage is a denial of a fair trial under Article 10-A of the Constitution and does not amount to reinvestigation but merely scientific verification, which is permissible under the law. He further argues that the belatedness of the application is not a valid ground for dismissal, as an accused has the right to introduce exculpatory evidence before the conclusion of the trial. He contends that allowing DNA analysis would not prejudice the prosecution's case and would aid in determining the truth of the matter. Lastly, he submits that the trial Court's erroneous

assumption that granting the request would reopen the investigation warrants interference in revisional jurisdiction, as failure to allow DNA verification constitutes a miscarriage of justice, and therefore, the impugned order is liable to be set aside.

6. Per contra, the learned Additional Prosecutor General has argued that the Criminal Revision Application is not maintainable under the law as the trial Court has rightly dismissed the Applicants' request under Section 265-F(7) Cr.P.C., which only allows the summoning of witnesses or documents and does not empower the Court to order fresh forensic investigation or DNA testing. He further argues that the prosecution evidence has already concluded, the statements of the accused under Section 342 Cr.P.C. have been recorded, and the defense has been given ample opportunity to cross-examine witnesses and produce its own evidence. He submits that the applicants never raised this request before the Investigating Officer (I.O.) during the investigation or before the learned Judicial Magistrate supervising the investigation, and filing such an application at this belated stage is a deliberate attempt to delay the trial. He contends that the trial Court cannot assume the role of an investigating agency and allowing the application would set a wrong precedent by permitting accused persons to reopen investigations at any stage of the trial. He further argues that a similar application was earlier allowed, enabling the defense to re-examine witnesses, and filing another application for the same purpose is an abuse of process. He submits that this Court, in Criminal Bail Application No. 1825/2024, has directed the trial Court to conclude the trial within six weeks, and entertaining such requests would obstruct compliance with this directive. Lastly, he asserts that the impugned order is well-reasoned and does

not suffer from any illegality, jurisdictional error, or miscarriage of justice, and therefore, the Criminal Revision Application is liable to be dismissed.

7. I have carefully considered the arguments advanced by both parties and thoroughly examined the material available on record with due diligence. It is an undisputed fact that the applicants did not submit such an application before the Investigating Officer (I.O.) during the investigation, nor did they approach the learned Judicial Magistrate supervising the investigation. If they genuinely believed that Hasnain's DNA profile was crucial for their defense, the appropriate stage to request forensic examination was during the investigation, when such analysis could have been conducted without disrupting the trial proceedings. The failure to raise this request at the proper procedural stage renders the present application legally untenable. The record reflects that prosecution evidence has already concluded, statements of the accused under Section 342 Cr.P.C. have been recorded, and the defense is now leading its evidence. The defense had a fair opportunity to challenge the DNA report (Exh. 8/F) through cross-examination but failed to do so. At this advanced stage, the request for further forensic examination is merely an attempt to reopen the investigation, which is impermissible under the law. Section 265-F(7) of the Code of Criminal Procedure (Cr.P.C.) stipulates that *"If the accused, or any one of several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination or the production of any document or other thing, the Court shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of Justice. Such ground shall be recorded by the Court in writing"*. Importantly, this provision does not empower the Court to order a fresh investigation or

conduct additional forensic testing. The applicants' request for DNA profiling effectively seeks to revive an aspect of the investigation, which falls outside the scope of this provision. The trial Court rightly held that what is not permissible directly cannot be done indirectly. Given that prosecution evidence has been concluded after extensive cross-examinations, statements of the accused have been recorded, and the defense has already opted to lead evidence, granting a fresh DNA analysis at this stage would amount to reinvestigating the case, which is legally impermissible. The trial Court's conclusion that the defense had ample opportunity to present their evidence at an earlier stage is well-grounded. Under circumstances bearing notable similarities, the Honourable Supreme Court of Pakistan, in the case of ***Muhammad Naeem and Another v. The State and Others*** **(PLD 2019 Supreme Court 669)**, delivered a ruling wherein it was expressly held that: *"The High Court has travelled beyond its lawful powers under section 423(1)(a) Cr.P.C. and has infact directed to conduct re-investigation or further investigation of the case, which is not permissible under the law. Even otherwise, calling for fresh examination of the intoxicating substance at the appellate stage after all these years may frustrate the settled law as to safe custody and safe transmission of the recovered substance making the report of the chemical examiner suspect and unreliable"*.

8. While exercising revisional jurisdiction, this Court must determine whether the trial Court committed a jurisdictional error or a manifest illegality. However, the trial Court has correctly applied the law, and there is no illegality, irregularity, or miscarriage of justice in the impugned order. Under criminal jurisprudence, revisional jurisdiction is limited to reviewing the correctness, legality, or propriety of any finding, sentence, or order recorded by an inferior Court, as well as the regularity of

its proceedings. The applicants have failed to establish any legal infirmity or error warranting interference by this Court.

9. Furthermore, this Court, vide order dated 18.11.2024 in Criminal Bail Application No. 1825/2024, has already directed the trial Court to conclude the case within six weeks. Entertaining such a request at this stage would contravene this directive and cause unnecessary delay. The right to a speedy trial is not exclusive to the accused but also extends to the victim and society at large. In view of the foregoing discussion, this Court finds no merit in the present Criminal Revision Application. The learned trial Court has correctly applied the law and dismissed the application under Section 265-F(7) Cr.P.C. on legally valid grounds. The applicants have failed to demonstrate any jurisdictional error or miscarriage of justice requiring this Court's intervention.

10. For the reasons stated above, the present Criminal Revision Application is dismissed. The Impugned Order dated 06.01.2025, passed by the learned trial Court in Sessions Case No.242/2024, is upheld. The trial Court shall proceed with the case in accordance with the law and ensure its expeditious disposal as per the directions of this Court.

JUDGE