

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.600 of 2025

Applicant : Shah Asad Through:
Mr. Raj Ali Wahid Kunwar, advocate.

The State : Through Ms. Seema Zaidi, Additional
Prosecutor General, Sindh.

Date of hearing : 19.11.2025

Date of Order : 03.12.2025

ORDER

Jan Ali Junejo, J:-- This Criminal Miscellaneous Application, filed under Sections 561-A and 397, Cr.P.C., seeks (i) setting aside of the order dated 01.07.2025 passed by the IV-Additional Sessions Judge, Karachi South, dismissing the Applicant's post-judgment motion as non-maintainable; (ii) a direction that the sentences awarded to the Applicant under Sections 320, 353 and 427, P.P.C., in Sessions Case No. 2803/2021, shall run concurrently in terms of Section 397, Cr.P.C.; and (iii) determination/clarification of the correct Diyat amount with reference to the applicable Government Notification.

2. The case originates from FIR No. 21/2021, registered at P.S. Clifton, Karachi, under Sections 353, 302, 427 of the Pakistan Penal Code (PPC) read with Section 7 of the Anti-Terrorism Act (ATA), 1997. The prosecution's case was that on January 18, 2021, a police team arrested an accused, Shah Nawaz, with 150 grams of "Ice" drugs. Shah Nawaz then led the police to a PSO petrol pump on 26th Street, DHA, Karachi, to apprehend his supplier, Shah Asad (the Applicant). Upon Shah Asad's arrival in a Black Honda Accord (Registration No. ANX-789), he was identified. As PC Mir

Muhammad approached the vehicle, Shah Asad, in an attempt to escape, reversed the car at high speed. The vehicle struck PC Mir Muhammad, dragged him approximately 150 feet, and also collided with a parked Toyota Corolla, causing significant damage. PC Mir Muhammad sustained severe injuries and died on the way to the hospital. Shah Asad was apprehended at the scene, and a subsequent search of his vehicle led to the recovery of 200 grams of "Ice" drugs.

3. During the trial, the Trial Court analyzed key evidence, including CCTV footage, which critically altered the legal characterization of the offence. The footage revealed that PC Mir Muhammad was standing and talking on his phone, not actively intercepting the vehicle, and was hit by the Applicant's sudden, high-speed reverse. The Court concluded that while the Applicant's act of reckless driving to escape arrest directly caused the death, the prosecution failed to prove the specific intent to murder required for a Section 302 PPC conviction. Vide the Judgment dated June 16, 2025, in Sessions Case No. 2803/2021, the Learned IV-Additional Sessions Judge, Karachi (South), convicted and sentenced the Applicant, Shah Asad, as follows:

1. Under Section 320 PPC:

- To undergo Rigorous Imprisonment for Eight (8) Years.
- To pay a Diyat amount of Rs. 8,103,955/- to the legal heirs of the deceased, PC Mir Muhammad.

2. Under Section 353 PPC:

- To undergo Simple Imprisonment for Two (2) Years.

- A fine of Rs. 50,000/-, with a further three (3) months of simple imprisonment in case of default.

3. Under Section 427 PPC (Mischief causing damage):

- To undergo Simple Imprisonment for Two (2) Years.
- A fine of Rs. 50,000/-, with a further three (3) months of simple imprisonment in case of default.

The trial Court also extended the benefit of Section 382-B of the Cr.P.C. The judgment did not explicitly state whether these sentences were to run consecutively or concurrently, leading to a subsequent application by the convict seeking an order for concurrent running.

4. Learned counsel for the Applicant submits that the trial Court erred in declining relief on the premise of being *functus officio* and failed to exercise the jurisdiction available to it under Sections 35 and 397, Cr.P.C., for directing that the sentences run concurrently. It is contended that Pakistani jurisprudence recognizes concurrency as the normal rule in the absence of aggravating circumstances, particularly where multiple sentences arise out of the same transaction. The omission of the trial Court to specify concurrency is argued to be a curable defect, which this Court may rectify under Section 561-A read with Section 397, Cr.P.C. With respect to *Diyat*, learned counsel submits that Article 12 of the Constitution prohibits retrospective enhancement of punishment; therefore, as the offence occurred in 2021, the applicable amount of *Diyat* must correspond to the Notification in force during 2021. Alternatively, counsel requests that this Court at least determine the correct Notification year and ensure that the quantification of *Diyat* is aligned accordingly. It is

argued that such clarification does not preclude the exercise of this Court's supervisory jurisdiction to ensure lawful computation. Lastly, learned counsel prays for grant of the present Criminal Miscellaneous Application. The learned counsel has relied upon 1. 2017 SCMR 307: Ashfaq Ahmed v. The State, 2. 2019 PCrLJ 1736: Nadeem Ahmed v. Jawwad Zaki & Others, 3. 2018 SCMR 418: Rahib Ali v. The State, 4. PLD 2015 SC 15: Mst. Shahista Bibi & Another v. Superintendent Central Jail, Mach & Ors, 5. PLD 2020 Lahore 523, 6. Order in Cr. Misc. Application No. 97/2021: Muhammad Siddiq v. The State, 7. PLD 2007 Karachi 186: Raza-ur-Rehman v. Govt. of Sindh & Ors, 8. PLD 2007 Karachi 139: Saleem Raza & Ors. v. The State, 9. PLD 2006 Lahore 64: Rana Abdul Ghaffar v. Abdul Shakoor & Ors.

5. Learned D.P.G. for the State opposes the application, submitting that after pronouncing its judgment, the trial Court rightly concluded that it had become *functus officio*; any modification of the sentence lies exclusively before the competent appellate or revisional forum. It is argued that Section 397, Cr.P.C., is not an instrument for rewriting a concluded judgment; rather, it empowers the Court awarding a subsequent sentence, or an appellate/revisional court seized of proper proceedings, to direct concurrency where warranted. The Applicant, having chosen not to file an appeal against his conviction or sentence, cannot now invoke this provision. It is further contended that no illegality, irregularity, or perversity has been demonstrated to justify interference under

Section 561-A, Cr.P.C. Accordingly, the application is liable to be dismissed.

6. I have duly considered the arguments advanced by the learned counsel for the Applicant as well as the learned D.P.G. for the State and have carefully perused the material available on record in the light of the relevant provisions of law. Section 323 of the Pakistan Penal Code, 1860 (P.P.C.) prescribes the value of Diyat, which is determined on the basis of thirty thousand six hundred and thirty grams of silver. Section 331(1) of the Code further provides as follows: *The diyat may be made payable in lump sum or in instalments spread over a period of five years from the date of the final judgment.* Sub-section (2) says: *“Where a convict fails to pay diyat or any part thereof within the period specified in subsection (1), the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment until the diyat is paid full or may be released on bail if he furnishes security [or surety] equivalent to the amount of diyat to the satisfaction of the Court [or may be released on parole any may be prescribed in the rules]* (3) *Where convict dies before the payment of diyat or any part thereof, it shall be recovered from his estate.”.* Sections 323 and 331, P.P.C., establish (i) a fixed benchmark for *Diyat* pegged to 30, 630 grams of silver, and (ii) the statutory mechanism for its quantification, payment, and enforcement. The conversion of this silver-based peg into Pakistani rupees is effected through the annual Notification issued by the competent Government. Section 331 further empowers the Court to allow payment in instalments over a

period of up to five years and prescribes the mode of enforcement, including custodial compulsion, which is statutorily capped at five years. The Honourable Supreme Court, in *Muhammad Anwar v. The State* (PLD 2012 SC 769) and *Suo Motu Case No. 19 of 2011* (2012 SCMR 437), has conclusively held that the amount of *Diyat* is to be determined according to the rate prevailing on the date of the final judgment. The Apex Court clarified that Section 323 establishes a Shariah-based silver peg in grams, while the Government's annual Notification contemporaneously translates that peg into its rupee value for the period in which adjudication is concluded. Thus, the relevant date for rupee quantification is the date of the final judgment, not the date of the offence. These authoritative pronouncements settle the legal position and are binding. It was observed in Case of *Muhammad Anwar v. The State* (PLD 2012 SC 769), that: *"In view of the language of section 323 of Pakistan Penal Code it is crystal clear that the value of the Diyat amount is to be assessed by the Court which shall not be less than the value of thirty thousand six hundred and thirty grams of silver, thus, it is apparent that the rate of Diyat in vogue at the time of compromise shall be applicable and not the rate prevailing at the time of commission of offence"*.

7. The Applicant's plea to adopt the Notification applicable on the date of offence (2021) cannot be accepted in view of the binding law declared in *Muhammad Anwar's Case* (PLD 2012 SC 769) and *Suo Motu Case No. 19 of 2011* (2012 SCMR 437), which mandate application of the rate prevailing on the date of final judgment. This scheme does not offend Article 12 because it applies the

contemporaneous statutory valuation to a fixed Shariah benchmark at adjudication; it is not a retrospective enhancement of the offence itself. Consequently, the correct Diyat amount is that which corresponds to 30,630 grams of silver, as notified by the competent Government for the fiscal year in force on 16.06.2025, the date of the trial Court's final determination pursuant to the judgment dated 16.06.2025. If the figure of Rs. 8,103,955/- reflects that Notification, it stands affirmed; if there is any clerical variance, the trial Court shall arithmetically align the figure precisely with the applicable Notification. All modalities of payment/enforcement, including instalments up to five years and custodial compulsion capped at five years, shall be governed by Section 331, P.P.C., on application by either party.

8. So far as Section 397, Cr.P.C. is concerned, it says: *"When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence"*. Section 397, Cr.P.C., creates a default of consecutive running for a "subsequent conviction", while conferring discretion on the court to order concurrency. The Honourable Supreme Court has recognized that High Courts may, in appropriate cases, exercise powers under Section 561-A read with

Section 397, Cr.P.C., to direct concurrency to avert undue harshness, especially where sentences stem from the same transaction. In Case of *Rahib Ali v. The State (2018 SCMR 418)*, it was observed by the Honourable Supreme Court of Pakistan that: *"In the light of discussion made above, there remains no doubt that the High Court and so also this Court have jurisdiction under Section 561-A, read with Section 35 and or section 397, Cr.P.C. as the case may to order such multiple sentences in same transaction/trial or in a separate and subsequent trial to run concurrently"*. The trial Court rightly declined to modify its concluded judgment on account of *functus officio*; however, that does not denude this Court of its inherent and revisional/supervisory jurisdiction under Sections 561-A and 397, Cr.P.C., to regulate the manner in which sentences run *inter se* and to clarify execution allied to a final judgment. Accordingly, the prayer for directing the sentences to run concurrently is maintainable before this Court. The question of the correct time-reference for Diyat quantification is a pure question of law already settled by the Supreme Court and is amenable to clarification by this Court to guide execution.

9. The Applicant received custodial sentences under Sections 320, 353 and 427, P.P.C., arising from the same transaction dated 18.01.2021. The judgment passed by the trial Court is silent on concurrency of the sentences. In such cases, superior courts have exercised discretion to direct concurrency to prevent disproportionate cumulative incarceration, particularly when the principal offence was found to be qatl-i-khata (Section 320) and not intentional murder (Section 302). There are no recorded aggravating

features warranting consecutive running. Accordingly, in exercise of powers under Sections 561-A and 397, Cr.P.C., it is just and proper to direct that the sentences of imprisonment awarded to the Applicant under Sections 320, 353 and 427, P.P.C., shall run concurrently. The benefit of Section 382-B, Cr.P.C., already extended, shall operate against the concurrent term.

10. For the foregoing reasons, the present Criminal Miscellaneous Application filed on behalf of the Applicant is allowed in part and dismissed in part in the following terms:

- a) The impugned order dated 01.07.2025 is set aside to the extent that it declined the relief of directing all sentences on the three counts to run concurrently, despite the fact that they arise out of the same transaction.*
- b) In exercise of powers under Sections 561-A and 397, Cr.P.C., all sentences of imprisonment awarded to the Applicant in Sessions Case No. 2803/2021 under Sections 320, 353 and 427, P.P.C., are ordered to run concurrently. The benefit under Section 382-B, Cr.P.C., shall continue to operate against the concurrent term.*
- c) With regard to Diyat, it is declared that the applicable amount shall be determined in accordance with the Government Notification in force on 16.06.2025, in consonance with the Case of Muhammad Anwar v. The State (PLD 2012 SC 769) and Suo Motu Case No. 19 of 2011 (2012 SCMR 437). The figure fixed by the trial Court is affirmed if it accords with that Notification; otherwise, the trial Court shall arithmetically correct the amount to reflect the exact notified figure under Sections 323 and 331, P.P.C.*
- d) All other prayers stand declined.*

Let a copy of this order be transmitted to the learned trial court and Senior Superintendent, Central Prison, Karachi, for compliance.

JUDGE