

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.128 of 2026

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Applicant : Hazrat Hussain son of Ali Abbas Khan,
Through Mr. Rehman Ghani Khattak Advocate.

Respondent : The State,
Through Mr. Musharaf Azhar, Special
Prosecutor ANF.

Date of hearing : 19.08.2026

Date of Order : 19.08.2026

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Hazrat Hussain invokes the revisional jurisdiction of this court, calling in question the order dated 26.03.2026 passed by the learned Judge, Special Court-I (CNS), Karachi, in Special Case No.02 of 2023 arising out of FIR No.95/2022 of Police Station ANF-MACHS, Korangi, Karachi. By the impugned order, an application under Section 540 Cr.P.C filed by the learned Special Public Prosecutor was allowed and the sealed case property was directed to be transmitted under safe custody to the Chemical Examiner for ascertainment of the net weight and percentage of the alleged methamphetamine (ICE), followed by a fresh report in Form-II under the Control of Narcotic Substances (Government Analysts) Rules, 2001 ("the 2001 Rules").

2. The prosecution case, so far as is necessary for the present controversy, is that on 08.12.2022 the applicant was intercepted at Jinnah International Airport, Karachi. Seven plastic bottles containing colored liquid were allegedly recovered from his trolley bag. Their aggregate gross weight was recorded as 7.54 kilograms. One sealed parcel containing the seven bottles was forwarded to the Government Analyst. The report dated 04.01.2023 identified methamphetamine, recorded the gross weight bottle-wise, and stated that 200 milliliters from each sample had been consumed; it did not separately state the weight of the liquid, the net weight or percentage/purity of methamphetamine.

3. At the trial, five prosecution witnesses were examined, including Dr. Abdul Saleem Qadeer, Director Laboratories and Chemical Examiner. The

prosecution evidence was then closed; the applicant's statement under section 342 of the Code was recorded; final arguments were heard; and the case was fixed for judgment. Before judgment was pronounced, the prosecution moved the application dated 24.03.2026. The applicant filed objections on 25.03.2026, principally contending that the prosecution could not be permitted, after closure of its case and final arguments, to repair a fatal defect or to introduce fresh material against him.

4. The learned trial Court held that the omission of net weight and percentage from the first report, coupled with the admissions of the Chemical Examiner, made further scientific ascertainment necessary for a just and fair decision. It therefore allowed the application and directed transmission of the sealed entire case property under safe custody. The material now produced with this revision further shows that the direction was acted upon. A subsequent Form-II report dated 18.05.2026 separately records the gross weight, weight of liquid, and ICE weight for each of the seven bottles. Its legal admissibility, reliability and probative value are not to be determined in this revision.

5. Learned counsel for the applicant has argued that once final arguments had been heard and the matter reserved for judgment, the trial Court lacked jurisdiction to reopen the evidentiary exercise; that the initial report and the Chemical Examiner's testimony disclosed deficiencies which enured to the applicant's benefit; that re-analysis amounts to filling lacunae in the prosecution case and undermines the presumption of innocence, the prosecution's burden of proof and the guarantee of fair trial under Article 10-A of the Constitution; and that a subsequent exercise cannot cure an already compromised chain of custody or safe transmission. Reliance has also been placed upon the rule of benefit of doubt referring case of 2018 SCMR 2039¹.

6. Conversely, learned Special Prosecutor has supported the impugned order. It has been submitted that the Court remained seized of the trial until pronouncement of judgment; that Section 540 of the Code authorizes and, where the evidence is essential, obliges the Court to secure material necessary for a just decision at any stage; that the issue concerns liquid methamphetamine in bottles and the first report stated only gross weight; and that the applicant retains the right to challenge the fresh report, cross-examine its maker and place every defence before the trial Court.

¹ *The State V. Imam Bakhsh & others.*

7. The questions arising are: (i) whether the trial Court became *functus officio* merely because arguments had concluded and the case had been fixed for judgment; (ii) whether securing further scientific evidence in these circumstances was beyond jurisdiction or an impermissible repair of the prosecution case; and (iii) whether the impugned order caused irremediable prejudice warranting revisional interference.

8. The revisional jurisdiction under sections 435 and 439 of the Code is supervisory. It is exercised to correct jurisdictional defect, illegality, material irregularity, perversity, misreading or non-reading resulting in miscarriage of justice. It is not an appeal against every interlocutory exercise of discretion, nor is it ordinarily employed to interrupt an ongoing trial where the subordinate Court has acted within jurisdiction and procedural prejudice can be cured at trial.

9. Section 47 of the Control of Narcotic Substances Act, 1997 applies the Code to proceedings before the Special Court, subject to the special Act. Section 36 makes the Government Analyst's report admissible without formal proof but does not make it conclusive. The report remains open to lawful challenge, and the Court must assess its compliance, reliability and weight with the rest of the evidence.

10. Section 540 of the Code has a discretionary and a mandatory limb. A Court may, at any stage of an inquiry, trial or other proceeding, summon, examine, recall or re-examine a person; it shall do so where the evidence appears essential to the just decision of the case. The jurisdiction is directed to discovery of truth and a just adjudication, not to success of either party. The Supreme Court has explained the breadth and duty inherent in this provision in PLD 1984 SC 95², 2001 SCMR 424³, 2001 SCMR 308⁴, 2011 SCMR 713⁵, and PLD 2013 SC 160⁶.

11. The expression "at any stage" includes a stage after closure of evidence or conclusion of arguments but before judgment is pronounced. A Court does not become *functus officio* upon reserving a matter; until judgment is pronounced and signed according to law, it retains *seisin* and the duty to ensure that its decision rests on an adequate and lawfully tested record. A learned Single Judge of this Court, in Special Criminal

² *Muhammad Azam v. Muhammad Iqbal*.

³ *Imran Ashraf and others v. The State*.

⁴ *The State v. Muhammad Yaqoob and others*.

⁵ *Ansar Mehmood v. Abdul Khaliq*.

⁶ *Nawabzada Shah Zain Bugti and others v. The State*.

Revision Applications Nos.297 to 301 of 2021⁷, decided on 18.12.2023, applied this principle to cases already reserved for judgment and held that the timing did not bar action under section 540, provided all consequential fair-trial rights remained intact.

12. At the same time, section 540 is not a license to reconstruct an investigation, manufacture evidence, or relieve the prosecution of its burden. There is a material distinction between (a) using judicial power merely to patch up a case after a failure of proof, and (b) obtaining or clarifying evidence which the Court itself considers essential to resolve a live issue fairly. The label "filling a lacuna" is not decisive: the controlling question is the Court's bona fide judicial assessment of essentiality. Even where additional evidence incidentally supplies an omission, it is not excluded if genuinely necessary for a just decision; equally, it cannot retrospectively erase a break in custody, an unlawful sampling process, destruction or alteration of property, or other substantive defect already established on the record.

13. The common-law conception of a criminal trial is not a contest in which an accidental omission must be preserved irrespective of truth. It is an accusatorial proceeding governed by the presumption of innocence and the prosecution's burden to prove guilt beyond reasonable doubt, but the judge is not a passive spectator. The judicial function is to ensure a fair process and a reliable verdict. That function permits necessary clarification before judgment, subject always to equality of arms, notice, confrontation, an effective opportunity to rebut, and the rule that any residual reasonable doubt benefits the accused.

14. The learned trial Court had not pronounced judgment. It therefore retained jurisdiction over the trial. The mere facts that evidence had closed, arguments had concluded and the case had been fixed for judgment did not create a vested right in either party to have the Court decide upon a record which the Court considered materially incomplete.

15. The subject of the application was not collateral. The alleged recovery was a colored liquid contained in seven branded plastic bottles; the weight recorded at recovery and in the first report was gross weight, while the statutory punishment under the amended section 9 is quantity-sensitive. The Government Analyst acknowledged that the bottles and caps were included and that quantity/percentage of ICE had not been stated in the first report. In those peculiar circumstances, clarification of

⁷ *Hanif Moosa and another v. The State.*

what was actually weighed and what quantity of the controlled substance was scientifically identified was capable of materially affecting the legal evaluation. The learned trial Court's conclusion that this information was essential cannot be characterized as arbitrary, perverse or wholly extraneous.

16. The subsequent report dated 18.05.2026 has already been obtained. Setting aside the transmission direction at this stage would not make the historical testing disappear. The legally appropriate course is to regulate the manner in which the resulting material may be brought upon and tested on the record. Excluding it without hearing its maker, or accepting it without confrontation, would each be premature.

17. Nothing in this order expresses any opinion on guilt, the admissibility or evidentiary weight of either of the chemical reports, the proof of safe custody or transmission, or the ultimate quantity attributable to the applicant. Those matters shall be decided independently by the learned trial Court on the whole record. The trial Court shall draw no adverse inference merely because the applicant challenged the re-analysis or exercises his rights of cross-examination and defence.

18. The impugned order represents an exercise of jurisdiction directed to evidence which the trial Court considered essential to a just decision. It was made before pronouncement of judgment and does not, by itself, determine any ingredient against the applicant. Subject to the safeguards stated above, no jurisdictional defect, material illegality or irremediable prejudice has been shown which would justify interference under section 439 of the Code.

19. Consequently, the criminal revision application is dismissed. The impugned order dated 26.03.2026 is maintained. The learned trial Court shall proceed expeditiously, avoid unnecessary adjournments, and decide the case strictly on its own merits and in accordance with law, uninfluenced by any tentative observation in this order.

20. The listed application(s), if any, also stand disposed of.

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