IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Rev. Application No. S- 104 of 2026

Applicant:	Abdul Lateef son of Allah Wadhayo alias Wadho bycaste Tart through Mr. Alam Sher Bozdar, Advocate.
Respondents:	State through Mr. Shafi Muhammad Mahar, D.P.G.
Date of hearing & Order:	**17.11.2026.**

O R D E R.

Suresh Kumar, J,- Through this Criminal Revision Application applicant Abdul Lateef Tart has impugned the order dated 06.10.2026 in Sessions case No. 113 of 2023 State vs. Abdul Latif Tart whereby learned trial Court dismissed the application under section 540-A Cr.P.C for recalling witnesses namely : ASI Abdul Aziz and HC Ghulam Sarwar.

2. The brief facts of the prosecution case are as follows: After the registration of FIR No. 15/2023 under Sections 302 and 311 of the PPC at P.S. Wasti Jeewan Shah, and crime No. 19/2023 under Section 23(i)(a) of the Sindh Arms Act, 2013, was lodged against the accused, Abdul Lateef. Following the investigation, the case was challaned, and after the supply of necessary documents, charges were framed, and the case was fixed for trial. The evidence of witnesses was recorded in the murder case, and cross-examination was conducted. In the offshoot case, the chief examination was conducted in the presence of counsel on 03.08.2026, and cross-examination

was reserved. The learned trial court appointed Mr. Aftab Ahmed Soomro, Advocate, at state expense without the consent of the accused.

3. The learned counsel for the applicant has mainly contended that the cross-examination of witnesses, namely ASI Abdul Aziz and HC Ghulam Sarwar, was conducted by counsel appointed without the consent of the accused, while the defense counsel was already engaged before the High Court. He has also contended that the cross-examination conducted by counsel at state expense does not satisfy the requirement of a fair trial and results in the deprivation of effective cross-examination. Furthermore, he has asserted that cross-examination is a right of the accused. He lastly contended that the impugned order should be set aside.

4. Conversely, the learned Deputy Prosecutor General (DPG) has supported the impugned order and stated that the counsel admittedly remained absent; therefore, the trial court has rightly appointed counsel at state expense. He also contends that the case pertains to the year 2023, for which there are directions for its early disposal.

5. I have given due consideration to the counsel for the parties. Upon perusal of the record, it reveals that the counsel for the applicant was busy before this Court, and the trial court hurriedly appointed counsel at state expense and conducted cross-examination through him without the consent of the accused. The Honourable Supreme Court, in the case of Ghulam Rasool Shah vs. State (2011 SC 735), held that it is the right of the accused to engage a defense counsel of their own choice. This Court, in the unreported case of Muhammad Umar and others vs. State in Criminal Appeal

No. D-37/2024, in paragraph No. 14, has held that the provisions confer a statutory right upon every accused to be defended by a pleader of his own choice. It embodies one of the fundamental principles of criminal jurisprudence that no person shall be deprived of the right to representation in a criminal proceeding. Hence, the Court is required to ensure that the accused is represented by counsel of his choice and that no proceedings are conducted in his absence or through counsel not duly engaged, unless with his free and informed consent recorded in writing.

6. In the case of Sadam Hussain vs. State (2018 MLD 1025) this Court has observed that " the trial Court is legally obliged to ensure that the accused has counsel of his choise or one appointed at State expenses, in he case involving capital punishment, if he could not afford." In the case of Syed Waris Khan vs. State (2018 MLD 422), this Court has held that in a case of death sentence that " accused is entitled to be defended by a pleader as a matter of right and trial in absence of counsel for accused would become illegal and such illegality cannot be cured under section 537 Cr.P.C.

7. The grievance of the applicant is that trial Court while appointing Mr. Aftab Ahmed Soomro Advocate did not obtain his consent nor learned counsel for pauper accused was appointed on his instructions resulting that important and essential questions were not put to cross examination.

8. For the reasons stated above, the Criminal Revision Application is allowed, and the impugned order dated 06.10.2026 is set aside. Consequently, the application under Section 540 Cr.P.C. filed by the applicant for recalling witnesses, namely ASI Abdul Aziz and HC Ghulam Sarwar, stands allowed. The learned trial court is directed to re-examine the

said witnesses for further cross-examination by the counsel of the appellant and to provide a full opportunity for cross-examination in both the offshoot case and the main case. The trial court is further directed to proceed with the trial and conclude the same within one month after the receipt of this order.

The Criminal Revision Application is disposed of in the above terms.

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