

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Justice AAMER FAROOQ
Justice ROZI KHAN BARRECH

Suo Moto Case No. 3 of 2022

Regarding Independent and Transparent Investigation
into the Murder of Renowned Journalist, Mr. Arshad
Sharif, in Kenya

On Courts Notice: Mr. Muhammad Saad Umar Bhuttar,
 ASC (*on behalf of Mst. Javeria Wd/of Mr.*
 Arshad Sharif) assisted by Ms. Rabia
 Gillani, Barrister Danyal Sohail, Mr.
 Tahir Hussain Anchan and Mr. Moiz Gul

For Federation: Mr. Amir Rehman, Additional Attorney
 General of Pakistan

For MoFA: Mr. Asad Khan Burki, Legal Advisor,
 Dr. Shomaila Usman Bilal, Deputy
 Director, Africa-I and Mr. Rahim Ullah,
 Director, Africa

For SJIT: Mr. Awais Ahmed, DIG (Convener)
 Mr. Usman Tariq Butt, SSP
 (Investigation), ICT Police, Mr. Abrar
 Ahmed, Inspector IO
 Mr. M. Ashraf, Additional Duty
 Officer/Record Keeper

For M/o Information: Ms. Robina Farooq, Deputy Secretary,
 Dr. Sohail Aftab, Director (Legal), Abid
 Mehmood Ch., S.O (Legal)

Date of Hearing: 14.01.2026

JUDGMENT OF THE COURT

JUSTICE AAMER FAROOQ:

1. On December 6th, 2022 the Supreme Court of Pakistan (“**the Supreme Court**”) initiated *suo moto* proceedings under Article

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184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**“the Constitution, 1973”**), concerning the murder of prominent Pakistani journalist, Mr. Arshad Sharif, in Kajiado, Kenya, on October 23rd, 2022. The purpose of the proceedings was to ensure a fair, independent, and transparent investigation into the incident. Following the enactment of the Constitution (Twenty-Seventh Amendment) Act, 2025, the matter stood transferred to this Court for adjudication.

2. Mr. Sharif left Pakistan on August 10th, 2020 and went to Dubai, United Arab Emirates. On August 5th, 2022 the Counter Terrorism Department, Khyber Pakhtunkhwa, issued a threat alert indicating that Mr. Sharif’s life was at risk and it is noteworthy that Mr. Sharif not being present in Pakistan at the relevant time, multiple First Information Reports (**“FIR”**) had been registered against him. Subsequently, Mr. Sharif left UAE and travelled to Kenya on account that he was asked by UAE authorities to leave the country. On October 23rd, 2022 at approximately 9:30 p.m. Mr. Sharif was fatally shot by personnel of the General Services Unit (**“GSU”**) on Losinyani Road, in the Kamukuru area of Kajiado County. The GSU, which is generally not a specialized tactical force, claimed that it had been deployed following a report regarding a stolen Mercedes vehicle. According to the Kenyan police version, the Toyota Land Cruiser bearing registration number KDG200M, in which Mr. Sharif was travelling, failed to stop at a designated roadblock despite repeated warnings, whereupon GSU officers opened fire. The tragic news of Mr.

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Sharif's death caused widespread shock and grief across the country. In response, the then CHIEF JUSTICE OF PAKISTAN UMAR ATA BANDIAL, took *suo moto* notice of the matter under Article 184(3) of the Constitution, 1973, upon opinions received by two Hon'ble Judges of the Supreme Court, JUSTICE IJAZ-UL-AHSAN and JUSTICE MUHAMMAD ALI MAZHAR. On December 6th, 2022 the Supreme Court directed the Additional Attorney General for Pakistan to submit the report of the fact-finding team on the same day and further instructed the Secretary, Ministry of Interior, to place on record the FIR pertaining to the murder of Mr. Sharif in Kenya. Consequently, FIR No. 987/22 dated December 6th, 2022, registered under sections 302/34 of the Pakistan Penal Code at Police Station Ramna, Islamabad, was produced before the Supreme Court. During the proceedings, the Additional Attorney General informed the Court that the Federal Government was constituting a Special Joint Investigation Team ("**SJIT**") to investigate the matter. The SJIT was accordingly constituted on December 7th, 2022 comprising five members drawn from various Pakistani law-enforcement agencies. While the proceedings were pending before the Supreme Court, the matter stood transferred to this Court under Article 175E (4) of the Constitution, 1973¹.

3. The matter, as it has unfolded before this Court, requires determination of the next steps necessary to ensure a transparent

¹ We proceed to hear this *suo moto* case on account that at the time it was taken, Supreme Court under Article 184(3) did hear cases *sua sponte*, however, after 27th Constitutional Amendment the situation has changed as we need an application to exercise our Original Jurisdiction and cannot act on our own motion.

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and independent investigation into the murder of Mr. Sharif. At this juncture, the Court notes that no party appearing in this case has raised any objection to the findings of the fact-finding teams or the SJIT. No objection has been taken to the mode or manner in which the inquiry has been conducted by the law enforcement agencies in Pakistan, nor has any allegation of impropriety been levelled. The primary concern, however, relates to the pace of the process, particularly in view of the involvement of, and the required coordination with, another sovereign state.

A.

Measures taken by Federal Government of Pakistan

4. The Constitution, 1973, provides that the executive authority of the Federation is exercised in the name of the President by the Federal Government, comprising the Prime Minister and the Federal Ministers, *see* Article 90. The Constitution, 1973, further places the Federal Government within the ambit of the State, which is obligated to protect the fundamental rights of its citizens. Accordingly, when a Pakistani citizen, Mr. Sharif, was shot dead in Kenya, the State, acting through the Federal Government, initiated efforts at the diplomatic level and took steps to ensure that the matter was properly investigated.
5. The Federal Government constituted a SJIT comprising five members drawn from various law enforcement agencies. The SJIT was tasked with ascertaining the facts and investigating the circumstances surrounding the murder. It carried out an in-depth investigation and compiled a comprehensive record of its findings.

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In the course of the investigation, the SJIT conducted interviews with several individuals who had close associations with Mr. Sharif and also contacted relevant authorities in the UAE to determine the reasons for his departure from that country (the contents and details of the SJIT report, of which Mr. Sharif's family is aware, are not reproduced here, as their disclosure may prejudice any trial that may take place in the future and, can be examined by the appropriate forum at the relevant stage). The SJIT also held discussions with the Office of the Director of Public Prosecutions ("**ODPP**"), established under Article 157 of the Constitution of Kenya, 2010, which is responsible for initiating investigations, inquiries, and proceedings in respect of crimes committed in Kenya. In addition, the SJIT engaged legal counsel to assess the available legal options arising from the incident and obtained legal advice regarding the events that followed. The SJIT has also examined the case file in Kenya, in the presence of the High Commissioner of Pakistan, and has established contact with Dr. Johnson, the Chief Pathologist who conducted the post mortem examination of Mr. Sharif.

6. Currently, this Court has been informed that an MLA agreement has been signed between the two States to facilitate cooperation between law enforcement authorities, including the collection of evidence, visits to the place of occurrence, and the interrogation of individuals connected with the incident (the relevant legal framework governing Mutual Legal Assistance is dealt with in Section C of the judgment). However, the learned Additional

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Attorney General has submitted that a formal request to visit Kenya has been made to the concerned Kenyan authorities and that Pakistan is presently awaiting their response. Upon perusal of the record, it is also noted that the Prime Minister of Pakistan has communicated with the President of Kenya on February 20th, 2023 to ensure that the investigation is carried out smoothly in a transparent manner and requested cooperation of the Kenyan authorities. The learned Additional Attorney General has further informed the Court that black warrants have been issued against the perpetrators to secure their arrest, so that they may be tried in Pakistan in accordance with law. In their individual capacity, the family of Mr. Sharif has also sought a remedy in Kenya, where they filed a writ petition before the Kenyan High Court regarding the murder of Mr. Sharif. The matter is currently under appeal before the Supreme Court of Kenya.

7. Even at the diplomatic level, the efforts of Ministry of Foreign Affairs are noteworthy. MoFA has acted as a bridge between the authorities of Pakistan and Kenya. It facilitated a telephonic conversation between the heads of the two States, and the High Commissioner of Kenya was called in by the Foreign Secretary of Pakistan to emphasize the need for Kenyan cooperation in the investigation of Mr. Sharif's murder. Additionally, on January 24th, 2023 the High Commissioner of Pakistan met with the Kenyan Public Prosecutor and also facilitated meetings between the SJIT, the Director of Public Prosecutions, and the Independent Policing Oversight Authority. The Minister of State for Foreign

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Affairs of Pakistan also contacted the Kenyan Cabinet Secretary for Foreign Affairs, and highlighted the importance of the instant matter, while emphasizing the need for facilitation by the Kenyan authorities in this regard.

8. To summarize the efforts of the Federal Government, we note that several pertinent and significant steps have been undertaken. These include the signing of the MLA, telephonic conversation between the Prime Minister of Pakistan and the President of Kenya, the formation of the SJIT and the investigation carried out by it, diplomatic contacts with the Kenyan authorities by the MoFA, and issuance of black warrants. Additionally, remedies are also being pursued at the individual level by the family of Mr. Sharif which are pending before Kenyan Supreme Court.

B.

Further Investigation and the Role of Courts

9. The Constitution, 1973, guarantees the right to a fair trial see Article 10A². This right necessarily extends to an investigation that is free, independent, and transparent. An impartial investigation requires that evidence be collected from all perspectives, including material that may support the defence as well as the one which advances the case of the prosecution. Accordingly, an investigation must be conducted in a holistic manner. In this context, it is essential to provide an open and enabling environment for the investigator. Only when the person

² **10A. Right to fair trial.** For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

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entrusted with the investigation is able to act independently and without undue pressure can relevant evidence be properly collected and the matter effectively carried forward to trial. Therefore, the protection afforded by Article 10A does not commence only at the stage of arraignment; rather, it begins from the very inception of the investigation.

10. Learned counsel, Mr. Saad Buttar, ASC, Ms. Somiya Arshad, widow of Mr. Sharif, contends that the instant *suo moto* proceedings be kept pending (but fails to clarify how long these proceedings are to remain pending; whether until completion of the investigation, until the trial of the accused persons, or indefinitely). Now, this would in effect, require this Court to continuously seek information from the relevant authorities, including the Federal Government and law enforcement agencies, regarding the progress and manner of the investigation. With respect, we find this submission to be wanting. We also note that perusal of Supreme Court's Order dated March 17th, 2023 shows that Mr. Shaukat Aziz Siddiqi entered appearance on behalf of the mother, widow and five children of the deceased journalist, Mr. Sharif, and categorically contended that as SJIT has been formed the Court's supervision though "*bona fide*" is impermissible, but the Court rejected the assertion despite the settled jurisprudence of the Supreme Court, with which we are in agreement, mandated

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that the Court should refrain from interfering in matters relating to investigation³.

11. In the year 2009, the Supreme Court in *Ajmeel Khan v. Abdur Rahim*, PLD 2009 SC 102, (per JUSTICE IJAZ-UL-HASSAN KHAN), while hearing an impugned judgment of the Peshawar High Court that dismissed a writ petition seeking quashment of an FIR, laid down the principle that “functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function”, see p.6 *ibid*. The Court further observed that “the conduct and manner of investigation normally is not to be scrutinized under Constitutional jurisdiction which might amount to interference in police investigation as the same could not be substituted by the Court”, *ibid* p.7. In the present context, it is significant that IJAZ-UL-HASSAN KHAN J. specifically used the words “conduct” and “manner” of investigation. Here, the conduct and manner relate to the “management of investigation”, that the *Ajmeel Khan* case prohibits the courts from examining.
12. If we were to oversee and monitor the investigation by keeping this *suo moto* pending, we would, in effect, be supervising every aspect of the investigation. Such an approach would be contrary to the

³ The Order dated March 17th, 2023, states, “At the outset of today's hearing, Mr. Shaukat Aziz, Siddiqui, ASC entered appearance on behalf of the mother, widow-and five children of the deceased journalist, Mr. Arshad Sharif. He submitted before the Court that as the Special Joint Investigation Team ("SJIT") has been formed to investigate the murder of Mr. Arshad Sharif, the Court's supervision of the said investigation, though *bona fide*, is impermissible”. In view of the foregoing, this Court is unable to comprehend the basis for the change in position. If judicial supervision of the investigation was considered legally impermissible back then, it remains unexplained how the same could now be regarded as legally permissible.

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authority of the Supreme Court as laid down in *Malik Shoukat Ali Dogar v. Ghulam Qasim Khakwani*, PLD 1994 SC 281, (per SHAFIUR REHMAN, J.). In that case, while hearing an intra-court appeal against a judgment of the Lahore High Court, the Supreme Court held that “the continued control over the investigation exercised by the Court [is] prejudicial to the accused and detrimental to the fairness of the procedure”.

13. If we also go through, section 4(1)(l) of the Criminal Procedure Code, 1898, it defines “investigation” as “[including] all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf”. Accordingly, an investigation is an inquisition to be conducted by a “police officer” and does not entail the continuous supervision or control of the Courts. The Criminal Procedure Code, 1898, vests statutory authority in the police to carry out investigations, and Article 10A of the Constitution, 1973, simultaneously imposes an obligation to ensure that such investigations are transparent and independent. In this context, courts generally have no role to play, except in exceptional circumstances, such as while entertaining habeas corpus petitions, investigations conducted with malafides, or matters that exceed the jurisdiction of the investigating officer, see *Fahad Ahmed Gulzar v. ASI/IO Saeed Mahroof*, 2025 PCrLJ 1140, (per ADNAN UL KARIM MEMON, J.).

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14. However, we observe herein that any grievance the family might have in relation to investigation of the case, can be addressed before the appropriate forum(s).
15. So, while keeping the aforementioned jurisprudence in mind, we turn to another submission made by Mr. Saad Buttar, ASC, that the Federal Government should address this case on international forums. In this regard, we advert to Article 40 of the Constitution, 1973, it provides that the State shall “foster goodwill and friendly relations among all nations”. While Article 40 is framed as a principle of policy and not a strict constitutional command, it reflects the goals and aspirations the State (or for that matter the Constitution, 1973) intends to achieve. If this Court were to issue judicial orders directing the State, including the Federal Government, to represent the matter internationally, it would not only amount to interference in the ongoing investigation, which is already proceeding under the MLA agreement, but would also encroach upon the domain of foreign policy. Undoubtedly, matters of foreign relations are best handled by the MoFA and the Federal Government, who are better equipped to determine what serves the purposes of Article 40 and what is appropriate in the international context. Furthermore, we have also perused the Order of the Hon’ble Supreme Court dated February 13th, 2023 wherein the Supreme Court concurred with the submission of the learned Additional Attorney General that steps under MLA are underway and that diplomatic channels are being actively

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pursued⁴. The Court observed that, in such circumstances, directly approaching international forums would not be the appropriate course of action. The Supreme Court accepted this submission, while clarifying that, should the need subsequently arise, recourse to such forums could be considered. Similarly, at this stage, we would leave this issue to the good sense of the Federal Government.

C.

Mutual Legal Assistance

16. MLA is a process through which countries agree to collect and exchange information to aid in the resolution of a criminal case and to ensure that the evidence obtained is admissible before Courts of law. In this regard, both Pakistan and Kenya have legal frameworks governing MLA. In Pakistan, the Mutual Legal Assistance (Criminal Matters) Act, 2020 (“**the Act**”), enacted on 11th August, 2020 provides a statutory framework for MLA in criminal matters and related issues. A central authority, namely the Secretary to the Ministry of Interior, Government of the Islamic Republic of Pakistan, is responsible for performing the duties and functions under the Act, see ss. 2(1)(c) & 4. Under s.4(2) of the Act, the central authority is empowered to make a request on behalf of Pakistan to the appropriate authority in a foreign country

⁴ Court Order’s dated February 12th, 2023, states “In response to the Court's suggestion that the United Nations may be involved in the investigation to ensure the cooperation of the Government of Kenya, the learned Addl. Attorney General submits that the proper diplomatic channel has been invoked under the Mutual Legal Assistance Act, 2011 for seeking the cooperation of the Government of Kenya. Therefore, time may be given for that process to run its course before approaching the United Nations. The request appears reasonable and is granted. However, in the meanwhile the MoFA shall familiarize itself about the terms and conditions for requesting the assistance of the United Nations in case the need subsequently arises”.

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for MLA in relation to a criminal matter in respect of which an investigation has been initiated or proceedings have been instituted either within or outside Pakistan. Exercising the powers conferred by s.4(2), a request for MLA was made to Kenya on 22nd February, 2023 which was accepted by the Kenyan and subsequently signed on December 10th, 2024. As the MLA request has been made by Pakistan to Kenya, the central authority exercises all powers pertaining to such requests as set out in s.7 of the Act.

17. On the other hand, Kenya has enacted the Mutual Legal Assistance Act, 2011, which empowers the Kenyan Central Authority, namely the Office of the Attorney General of Kenya, to act upon requests for mutual legal assistance received from foreign countries, see ss. 5 and 6 of the Mutual Legal Assistance Act, 2011. It is therefore evident that both Pakistan and Kenya have established legal frameworks to address such matters, and in the same time investigations at the state level are actively underway. Two sovereign nations are involved, each handling the matter in accordance with their respective laws.
18. In the instant case, we note that since the MLA agreement has been signed between the two nations and they are also coordinating at the diplomatic level to implement it, we are of the view that the authorities of both countries are taking appropriate action under their respective laws. Therefore, there is no need for any judicial interference in this regard when the law and investigation is taking its due course.

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D.

Conclusion

19. In light of the aforementioned discussion, the instant *suo moto* action is disposed of. Accordingly, all pending applications are also disposed of.
20. We acknowledge and share the grief felt by our Nation and the journalist community over the death of our citizen. We also express our gratitude for the assistance rendered by Mr. Amir Rehman, Additional Attorney General for Pakistan, the members of the SJIT, officials of the Ministry of Foreign Affairs, and Mr. Saad Buttar, ASC, in this matter.
21. Needless to observe that in case the legal heirs of Mr. Sharif have any specific grievance in the matter they can approach the court(s) of competent jurisdiction.

Judgment is hereby entered.

JUDGE

JUDGE

Islamabad
Zawar
Not Approved for reporting