

ORDER SHEET  
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Constitution Petition No. S-434 of 2025  
(Hamza Khan v. P.O Sindh and others)

Date	Order with signature of Judge
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1. For orders on office objections 'A'.
2. For orders on M.A No.943/25 (E/A).
3. For hearing of main case.

**20-11-2025**

Mr. Wajid Ali Gaad, Advocate for petitioner.

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The case set up by the petitioner is that he allegedly solemnized marriage with respondent No.4, Mst. Neelam, on 07.11.2020, and two children were born out of the wedlock, namely baby Hafsa Batool (aged about 6 years) and Muhammad Faris (aged about 5 years). The petitioner asserts that in 2023 he shifted to Tando Adam and that when minor Muhammad Faris was about three months old, respondent No.4 left his house, allegedly taking away dowry articles. According to him, on 29.10.2025, while he was visiting his parents along with the minors, a notice was served upon him at 12:00 p.m. by the office of the SSP Kamber Shahdadkot requiring his appearance before the High Court of Sindh, Circuit Court Hyderabad on 03.11.2025 along with the minors. He contends that the SHO, Police Station Sakhi Pir, along with respondent No.4, allegedly entered the premises of his parents without any search warrant, misbehaved with the family members, and on 30.10.2025 arrested him along with the minors. It is further alleged that he was first taken to P.S. Sakhi Pir and thereafter produced before the High Court at Hyderabad, where, on directions of the Court, the custody of the minors was handed over to respondent No.4. On the basis of these assertions, the petitioner has filed the present petition, alleging that the minors are in illegal confinement and has sought their production.

I have heard the learned counsel for the petitioner and examined the material available on record. The petitioner seeks the recovery of minors from their real mother (respondent No.4). He has annexed a copy of the order dated 30.10.2025 passed by this Court at Hyderabad in C.P. No.S-581/2025, which clearly reflects that the alleged detainees (minors) were produced by the official respondents pursuant to the Court's directions and the custody was handed over to respondent No.4, being the mother, subject to execution of a P.R. bond of Rs.100,000/-.Even otherwise, the minors are presently residing with their real mother, and custody of children of such tender ages with their mother cannot, by any stretch of imagination, be treated as unlawful or illegal. It is a settled principle that the welfare of minor children is ordinarily presumed to lie with the mother, particularly when they are of early years, and such custody does not amount to detention nor can it be questioned through a constitutional petition seeking habeas corpus. It is also an admitted position that the petitioner was a party to C.P. No.S-581/2025, and the order therein was passed by another Bench of this Court in his presence. Despite this, he has not challenged that order before competent forum. In these circumstances, the extraordinary constitutional jurisdiction under Article 199 cannot be invoked to indirectly question, revisit, or sit in appeal over an order passed by a coordinate Bench. The petitioner cannot be allowed to re-agitate custody issues under the guise of a habeas corpus petition. The petitioner's grievance essentially relates to the right of custody, which is a civil remedy, and appropriate proceedings lie before the competent Guardian Court. The constitutional jurisdiction under Article 199 cannot be invoked to bypass the statutory mechanism enacted for such matters. The attempt to re-agitate custody through a constitutional petition after a judicial order of the High Court amounts to a misuse of this Court's extraordinary jurisdiction.

In the above circumstances, no case of illegal detention is made out. The official respondents have acted strictly in compliance with the orders of the Court. The present petition is, thus, not maintainable, in view of the availability of an adequate and efficacious alternate remedy before the competent Guardian Court. Accordingly, the petition is dismissed in limine, along with pending applications, if any, leaving the petitioner at liberty to avail appropriate remedy before the competent Court for custody and visitation of the minors.

JUDGE

Irshad Ali M/Steno