

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

C.P. No.S-110 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on office objection.
2. For hearing of main case.

21.08.2025

Mr. Meer Muhammad Nohri, Advocate for the petitioner. Mr. Vasand Thari, Advocate for the respondent No.4.

Mr. Muhammad Sharif Solangi, A.A.G Sindh.

O R D E R

Amjad Ali Sahito, J:- The petitioner, Mst. Saima, has invoked the Constitutional Jurisdiction of this Court, assailing the order dated 20.05.2025 passed by the learned Additional Sessions Judge-II, Tharparkar at Mithi, and seeks the following reliefs:

a. That this Honourable court issue set-aside the order dated 20-05-2025 passed by Additional Sessions Judge-II Tharparkar @ Mithi in Criminal Misc: Application No: 219 of 2025.

b. Rule Nisi may be issued and issued directions to the respondents No; 1 and 2 to conduct a surprise raid at the house of the private respondents at above mentioned address and produce the detenue before this Honourable court and Honourable court handed over the custody the detenue to the applicant, as the applicant is real mother of the detenue.

c. Any other relief which this Honourable Court deem fit and proper may also be awarded in the circumstances of the case in favour of the applicant.

2. Notices were duly issued to the respondents, who entered appearance through their learned counsel. The respondents thereafter submitted their written statements/comments along with supporting documents, which were taken on record. The concerned SHO was directed to produce the alleged detenue, baby Reena Kumari, on the next of hearing and matter was adjourned to 25.06.2025.

3. In pursuance of the court direction the alleged detenue baby Reena Kumari aged about one and half year was produced and following order was passed;

The minor/ alleged detainee Reena Kumari is produced by her father Kaveer (Respondent No.4). Mr. Vasand Thari advocate filed vakalatnama on his behalf and seeks time to file objections. Time granted.

Through instant petition, the petitioner seeks the recovery and custody of her minor daughter Reena Kumari, aged about one and half years, who is presently with the private respondents No.4 to 7.

The petitioner Mst. Saima, being the biological mother of the minor/ alleged detainee, has submitted that few days back in evening time private respondents came with her father at her house and forcibly taken away her suckling baby/ alleged detainee; then she went to the house of private respondents, but they did not allow her to meet with her minor daughter. She further submitted that minor is suckling baby and her health is deteriorating day by day, necessitating the immediate care of her mother.

Without prejudice to the final adjudication regarding the welfare and custody of the minor by the competent Guardian Court and considering the tender age of the alleged detainee and the paramount importance of her welfare, particularly her need for maternal care as a suckling baby, it is deemed appropriate to make an interim arrangement for her custody. Therefore, it is hereby ordered that interim custody of the alleged detainee/minor, Reena Kumari, is granted to the petitioner Mst. Saima, being the biological mother, with direction to produce her on next date of hearing and furnish such P.R.Bond in the sum of Rs.100,000/= (Rupees One Lac Only). This interim arrangement shall remain in effect till next date of hearing.

The SHO PS Mithi, who is present in Court, is directed to ensure the safe handing over the custody of alleged detainee/ minor Reena Kumari to the petitioner Mst. Saima/mother, with immediate effect. To come up on 10-07-2025.

4. After passing the interim order the baby Reena Kumari was handed over to her mother with direction to produce before this Court on next date of hearing.

5. Per learned counsel that the petitioner is biological mother as she is entitled for custody of the minor. He further submits

that in fact the order dated 11.03.2025 passed by the learned Judicial Magistrate/Family Judge, Diplo was against the law as without hearing the petitioner the order was passed as such she filed this Constitutional Petition before this Court under article 199 of Constitution of Pakistan for recovery of Mst Reena Kumari in support of his contention he has relied upon following case law; Mst Haseen Bibi vs. Abdul Haleem & others (PLD 2024 SC 291). Ahmed Sami and 2 others vs. Saadia Ahmed and another (1996 SCMR 268). Mst Rabyia Ilyas vs. Additional Sessions Judge and others (PLD 2019 Lahore 281). Mst Nuzhat Sultana vs. Syed Farukh Raza and another (PLD 2003 Karachi). Mst Shehnaz Bibi vs. Muhammad Akram and others (1995 P Cr. LJ 307).

6. On the other hand learned counsel appearing on behalf of private respondent/Ex-Husband of Mst Saima namely Kaveer is also present. Learned counsel for the private respondent No.4 has argued that in fact Mst Saima previously her name was Shrimati Bhagwanti Hindu and contracted marriage with Kaveer/respondent No.4 out of such wedlock Mst Reena Kumari was born and now her age is one and half year. Subsequently there was separation was held between Mst Saima (Shr. Bhagwanti) and Kaveer. He further submits that after separation Mst Reena Kumari contracted second marriage after converting religion from Hindu to Muslim with one Saddam Hussain, who is resident of Malihar, P.O Diplo. He has further contended that after separation Mst Saima (Shr. Bhagwanti) left her daughter Reena Kumari with her father. After separation the respondent No.4 filed suit under sections 7, 10 & 25 Guardian & Wards Act for the custody of the minor. Notices were issued and thereafter order was passed and the custody of the minor was handed over to his father. The competent Court of Law has also passed the order wherein the custody of the minor Baby Reena Kumari was handed over to Mst Saima (Shr. Bhagwanti) the then wife of respondent Kaveer. He lastly prayed that the instant Constitutional Petition may be dismissed.

7. Learned A.A.G also supported the contentions raised by the learned counsel for the private respondent.

8. I have heard the learned counsel for the parties and have gone through the material available on record with their able assistance.

9. Upon examination of the record, it transpires that Mst. Saima (formerly Bhagwanti) had initially contracted marriage with respondent No.4, namely Kaveer, out of which wedlock a female child, Reena Kumari, was born, who is presently aged about one and a half years. Subsequently, due to estrangement, the petitioner separated from respondent No.4 and thereafter entered into a second marriage with one Saddam Hussain, after embracing the religion of Islam. The petitioner, at the time of such separation, left the minor Reena Kumari in the custody of her father, respondent No.4. In the meantime, respondent No.4, being the ex-husband of the petitioner, instituted an application under Sections 7, 10, and 25 of the Guardians and Wards Act, 1890, whereupon notices were issued to the parties. During the pre-trial proceedings, through the intervention of their respective learned counsel, the parties amicably resolved the matter concerning the custody of the minor, and a joint settlement statement to this effect was placed on record.

10. Consequently, the said application was allowed and the custody of the minor was handed over to respondent No.4, namely Kaveer. For clarity, it is considered appropriate to reproduce herein paragraphs 3 and 4 of the order dated 11.03.2025, passed by the learned Judicial Magistrate and Family Judge, Diplo, which read as under:

3).Instant application was instituted/admitted on 21-02-2025, notices were issued to the opponent which were served upon him. On 26-02-2025 service held good vide order at Ex- 07. On 04-03-2025 Mr Keemat Rai learned counsel filed power on behalf of opponent at Ex-08 and seek time for W.S. On 11-03-2025 objection filed on behalf of opponent at Ex-10. Pre trial held between parties, same became successful, settlement statement filed at Ex-11, G.W application U/s 12 withdrawn by counsel for opponent, same is dismissed as withdrawn.

04) During pre-trial further both parties with intervention of both counsels amicable settle the dispute between them with regard custody of minor, such settlement statement filed by both parties, which reveals that custody of minor Reena

Kumari remain with applicant father Kaveer, applicant will allow opponent maternal grandfather and maternal grandmother, whenever they desire, except these no other relatives will meet with minor Applicant will bring the minor at the house of opponent on each religious event/occasion. Safety of minor lies burden with whom custody remain for the period of meetings.

Hence in view of above statement instant Guardian application is hereby allowed and decided by way of successful pretrial & compromise settlement, completely decide issue of custody of minor Reena Kumari, Minor present in court handed over to applicant with direction to produce her for meetings at house of opponent or at court premises, further during religious occasion, EID, Birthday or special occasions, applicant will hand over custody of minor to opponent at 10:00 AM and receive return back the custody of minor at 05:00 P.M from house. (in case of court premises the time will be reckoned as 03:00 P.M). If any violates any above terms with prove, same shall be prosecuted under contumacy proceedings. Hence above order with no order as to cost.

11. In the interregnum, the petitioner, Mst. Saima (formerly Bhagwanti), instituted Criminal Miscellaneous Application No.219 of 2025 under Section 491, Cr.P.C. before the learned District & Sessions Judge, Tharparkar at Mithi, titled *Mst. Saima vs. SSP Tharparkar at Mithi & others*. Upon hearing the parties, the learned Additional Sessions Judge-II, Tharparkar at Mithi, disposed of the said application, holding that the minor, Reena Kumari, is presently in the lawful custody of opponent No.4, namely Kaveer, who is her real father and natural guardian, as already recognized by a competent court of law. It was further observed that there exists no allegation or evidence of illegal detention or maltreatment warranting the invocation of Section 491, Cr.P.C.

12. Instead of assailing the aforesaid order through revision, the learned counsel for the petitioner has invoked the Constitutional Jurisdiction of this Court, seeking annulment of the order dated 20.05.2025 passed by the learned Additional Sessions Judge-II, Tharparkar at Mithi.

13. Thus, the pivotal question now arising for determination before this Court is whether the minor, Reena Kumari, is under

unlawful custody or confinement. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment rendered in *Ahmed Sami and 2 others v. Saadia Ahmed and another* (1996 SCMR 268), wherein the Honourable Supreme Court of Pakistan, while rendering its decision, had also referred to the earlier precedent in *Muhammad Laved Umrao v. Miss Uzma Vahid* (1988 SCMR 1891), holding inter alia as under:

*The Guardians and Wards Act, as the title itself suggests, deals with the guardians, wards and the problems and, questions relating to them. Section 7 relates to the appointment of a guardian by the Court and section 12 authorises the Court to make interlocutory order for protection **of minor and** interim protection of person and property. The two matters, one dealt with by section 491, Cr.P.C. and the other under the Guardians and Wards Act, are entirely different and there is no question of one excluding the other, the one overlapping the other or the one destroying the other. The law as it stands shows no such repugnancy.'*

In view of the above observation, it is quite clear that in appropriate cases the Court under section 491, Cr.P.C. if it reaches the conclusion that a minor has been illegally removed from the custody of a person who was holding his custody lawfully, the Court is empowered under section 491, Cr.P.C. notwithstanding the provisions of Guardians and Wards Act to pass appropriate orders. We are, therefore, of the view that the jurisdiction of the Criminal Court is not barred under section 491, Cr.P.C to pass appropriate order with regard to custody of a minor who has been illegally removed from the custody of a person or: account of the provisions of Guardians and Wards Act."

In the cite above case the Honourable Supreme Court of Pakistan has held that it is true that a Guardian Court is the final arbitrator to adjudicate upon the question of custody of child but this does not mean that in exceptional cases when a person who is holding the custody of a minor lawfully and has been deprived of the custody of minor has no remedy to regain the custody pending adjudication by the Guardian Court.

14. In the present matter, respondent No.4, namely Kaveer, being the real father of minor Reena Kumari, instituted an application under Sections 7, 10 and 25 of the Guardians and Wards Act, 1890 seeking custody of the said minor. Pursuant to

issuance of notices, the parties subsequently filed a compromise application. Thereafter, vide order dated 11.03.2025 passed in Guardians and Wards Application No.06 of 2025, the learned Judicial Magistrate & Family Judge, Diplo, recorded the compromise between the parties. During the proceedings, both parties appeared before the Court and, through the intervention of their learned counsel, amicably settled the dispute regarding custody of the minor. The terms of settlement reflected that the custody of minor Reena Kumari would remain with her father, applicant Kaveer, while the maternal grandfather and maternal grandmother of the minor would be allowed to meet her as and when they so desire. It was further agreed that no other relatives would be entitled to meet the minor. The applicant was also directed to bring the minor to the residence of the opponents on each religious occasion. Responsibility for the safety of the minor during the period of such meetings was placed upon the party in whose custody the minor remained at the relevant time. On the basis of the said compromise, the application was allowed and custody of the minor was handed over to the applicant/Respondent No.4, Kaveer, with the direction to produce her at the residence of the opponents or before the Court as and when required for the purpose of meetings.

15. Instead of assailing the said order dated 11.03.2025, which is still in the file passed by the learned Judicial Magistrate & Family Judge, Diplo, in Guardians and Wards Application No.06 of 2025, before the appellate forum, the petitioner filed an application under Section 491, Cr.P.C., alleging illegal detention of her daughter by her father.

16. However, upon due consideration, it was held that the detinue, minor Reena Kumari, was not in unlawful custody of the private respondent. Accordingly, the instant petition stood dismissed. On the last date of hearing, i.e. 25.06.2025, custody of the minor was temporarily handed over to the petitioner, Mst. Saima (formerly Bhagwanti). Today, she is present before this Court and is directed to return the custody of the minor to respondent No.4, Kaveer, being her father and natural guardian, as her custody with him is lawful under the law. Nonetheless, the

petitioner is at liberty to approach the competent court of law to challenge the order dated 11.03.2025 passed by the learned Family Court, or file fresh case before competent court of law and in the event such proceedings are instituted, the same shall be decided strictly in accordance with law.

17. In view of the above, the instant petition is disposed of with no order as to costs.

JUDGE

Adnan Ashraf Nizamani