

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constitutional Petition.No.S-423 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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01. For orders on office objection "A".
02. For hearing of main case.

29.06.2026.

Mr. Sajid Ali Mahessar, Advocate for the Petitioner.

Mr. Muhammad Afzal Jagirani, Advocate for Respondent No.2.

Mr. Mohsin Ali Khan, Assistant Advocate General, Sindh.

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The petitioner has assailed the judgment dated 18.03.2025, passed by the learned 1st Family/Guardian Judge, Mehar, in Guardian and Wards Application No. 38 of 2024, whereby the application filed by respondent No. 2, being the father of the minors, was allowed. Feeling aggrieved by the said judgment, the petitioner, who is the mother of the minors, preferred Guardian and Wards Appeal No.07 of 2025 before the learned Additional District Judge-II, Mehar. However, vide judgment dated 29.05.2025, the appeal was dismissed, thereby maintaining the findings recorded by the learned trial Court. Hence, the petitioner has invoked the constitutional jurisdiction of this Court.

Learned counsel for the petitioner contends that the Courts below failed to properly appreciate the material available on record while passing the impugned judgments. He submits that although the petitioner is the natural mother of the five minor children and has always been concerned with their welfare, the learned trial Court illegally deprived her of their custody. It is further argued that the learned trial Court had also directed that all the minors be enrolled in schools and had granted visitation rights to the petitioner; however,

such visitation rights have not been implemented in their true letter and spirit by respondent No.2. According to the learned counsel, the impugned judgments have not adequately safeguarded the welfare and best interests of the minors and, therefore, are liable to be set aside.

Conversely, learned counsel for respondent No.2 has supported the concurrent findings recorded by the Courts below. He submits that the visitation rights granted to the petitioner are generally being honoured and that, if any interruption occurred, the same was merely occasional and not deliberate. He further contends that the petitioner has failed to establish any circumstance demonstrating that the welfare of the minors would be better served by transferring their custody. It is also pointed out that the minors, who were between five and nine years of age in the year 2021, have now attained sufficient age and maturity to form and express an intelligent preference regarding the parent with whom they wish to reside. According to the learned counsel, their wishes deserve due weight while determining the question of custody.

Learned Assistant Advocate General, Sindh, has also supported the impugned judgments. He submits that both the trial Court and the appellate Court have rightly adjudicated the matter after taking into consideration the paramount consideration of the welfare of the minors. He further points out that when the minors were produced before this Court on 08.06.2026, they unequivocally expressed their unwillingness to reside with the petitioner and preferred to continue residing with respondent No.2. He, therefore, submits that the welfare of the minors unmistakably lies in allowing them to remain in the custody of respondent No.2.

Heard the learned counsel for the parties and perused the material available on record.

The controversy in the instant petition essentially relates to the custody and welfare of the five minor children. It is well recognized that in matters concerning the custody and guardianship of minors, the paramount and overriding consideration is always the welfare

and best interests of the minors. While determining such welfare, the Court is required to consider various factors, including the age of the minors, their educational, moral, emotional and physical well-being, the character and capacity of the competing guardians, and, where the minors have attained sufficient maturity, their own wishes and preferences.

In the present case, the petitioner has not been able to point out any material illegality, misreading or non-reading of evidence, jurisdictional defect, or perversity in the concurrent findings recorded by the Courts below. Nothing has been brought on record to suggest that preference of the minors to live with Respondent No.2 was the result of coercion, tutoring or undue influence. Their wishes, therefore, constitute a relevant and significant factor in determining their welfare.

Although the petitioner has alleged non-compliance with the visitation arrangement, learned counsel for respondent No.2 has explained that the visitation rights are generally being implemented and that any lapse was occasional in nature. Such allegation alone is insufficient to disturb the existing custody arrangement, particularly when the overall welfare of the minors appears to be adequately secured.

Both the learned trial Court and the learned appellate Court have recorded concurrent findings after considering all relevant circumstances. No exceptional ground has been made out warranting interference by this Court in the exercise of its constitutional jurisdiction. Reliance is placed upon ***Sayed Arshad Shah and others v. Additional District Judge and others*** (PLD 2026 Lahore 332), wherein it has been held that:

7. While interpreting Section 17 of the Guardians and Wards Act, 1890 (Act) which spells out the guidelines for appointing a person as a guardian, it has been held by the Supreme Court of Pakistan in judgments reported as Raja Muhammad Owais v. Mst. Nazia Jabeen and others (2022 SCMR 2123), Mst. Beena v. Raja Muhammad and others (PLD 2020 SC 508), Rashid Hussain v. Additional District Judge, Islamabad (East)

and others (PLD 2022 SC 32), Mir Bat Khan v. Mst Sherin Bibi and others (2019 SCMR 520), Shabana Naz v. Muhammad Saleem (2014 SCMR 343), Mehmood Akhtar v. District Judge, Attock and 2 others (2004 SCMR 1839), Badruddin Roshan v. Mst. Razia Sultana and another (2002 SCMR 371) and Mst. Nighat Firdous v. Khadim Hussain (1998 SCMR 1593) that the primary and the foremost consideration for taking a decision qua custody of minor is his/her welfare.

In view of the foregoing discussion and the material available on record, this Court finds no illegality, irregularity, perversity, or jurisdictional defect in the concurrent findings recorded by the learned Courts below to warrant interference in the exercise of constitutional jurisdiction. Consequently, the impugned judgments call for no interference. Accordingly, the instant constitutional petition, being devoid of merit, is hereby dismissed.

JUDGE