

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.S-536 of 2018

Date	Order with signature of Judge
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1. For orders on office objection at flag 'A'
2. For hearing of main case

Date of hearing: 12.06.2018

Date of Announcement: .06.2018

Mr. Abdul Sattar Soomro, Advocate for the petitioners
M/s. Sardar Ali Shah Rizvi, DPG and Noor Hassan Malik AAG

ORDER

ADNAN IQBAL CHAUDHRY J. – This is a petition for a writ of habeas corpus under Article 199(1)(b) of the Constitution of the Islamic Republic of Pakistan, 1973 for (the production of) (i) Mst. Manzooran and (ii) Gul Khatoon (the alleged detenués) who are daughters of the Petitioners. It is alleged that on 24-01-2018 the detenués along with the Petitioners and two other relatives were on their way to Civil Hospital Mirpur Mathelo for the medical treatment of the detenués when their car was intercepted by another car from which disembarked the private Respondents 10 to 14 who abducted the detenués. Per the petition, the identity of the Respondents 13 and 14 came to be known to the Petitioners later on. However, from the petition it appears that the identity of the Respondents 10 to 12 and that of their Village was known to the Petitioners at the time of the alleged abduction. The petition alleges that the Respondents 10 to 14 have detained the detenués in the house of the said Respondents in Umer Kot, District Ranjhanpur, Punjab, and that when the Petitioners approached the said Respondents for the release of the detenués, they were threatened with dire consequences. The incident was reported on 09-02-2018 at Police Station Mirpur Mathelo, District Ghotki, where the case was registered as Crime/FIR No.14/2018 under Sections 365-B and 363 PPC. It is said that after the Inspector

General of Police Sindh had obtained the requisite permission from the Home Department, a Police party was dispatched to District Rajanpur, Punjab, to arrest/transfer the accused named in the FIR, but they could not succeed in recovering the detainees, compelling the Petitioners to file an application under Section 491 Cr.PC before this Court, which was withdrawn on 10-05-2018 when confronted with the objection that the alleged detainees were beyond the criminal appellate jurisdiction of the Court, however with the permission to file a constitutional petition; hence this petition. While the petition describes only the detainee Gul Khatoon as a minor, the FIR describes both detainees as minors, and while the petition alleges their abduction by the Respondents 10 to 14, the FIR is registered only against the Respondents 10 to 12.

2. Be that as it may, the office has raised an objection on the maintainability of this petition before this Court when the detainees are alleged to be in custody in Punjab, beyond the territorial limits of this Court, and on 01-06-2018 the Petitioners' counsel was put on notice to satisfy the Court on the maintainability of this petition in Sindh.

3. Learned counsel for the Petitioners contended that since the detainees were initially detained within the territorial limits of this Court and thereafter moved beyond such limits (to Punjab), this Court would retain territorial jurisdiction to issue a writ for habeas corpus under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. That, in my view, is a misconception. Article 199(1)(b) of the Constitution, under which a writ of habeas corpus is issued, is clearly for a person in custody within the territorial jurisdiction of the Court. It reads:

“199. Jurisdiction of High Court. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law –
 (b) on the application of any person, make an order –
 (i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner;...”
 (underlining supplied for emphasis)

4. In the case of *Lal Bux v. Station House Officer, Police Station 'A' Section, Sukkur* (PLD 2012 Sindh 288) a Division Bench of this Court while comparing the scope of a direction for habeas corpus under Section 491 Cr.PC with Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 also held that Article 199(1)(b) of the Constitution “*clearly provides that the powers conferred upon this Court for writ of habeas corpus can only be exercised within the territorial jurisdiction of this Court and not otherwise.*”

5. Since the detainees are alleged to be in custody in Punjab, this Court does not have jurisdiction to issue the writ prayed for. Consequently, the petition is dismissed. However, the SSP District Ghotki (Respondent No.4) shall ensure that efforts to recover the detainees in Crime No.14/2018 registered at Police Station Mirpur Mathelo, District Ghotki, are expedited.

JUDGE