

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-1015 of 2021

Date	Order with signature of Judge
Scherazade Jamali, Petitioner through:	Sardar Muhammad Latif Khan Khosa, advocate along with Mr. Baqar Mehdi, advocate and Mr. Tasadduq Nadeem, advocate
Hashim Jawad Gillani, Respondent No.5 along with Minor Hasan Syed Gillani through:	Mr. Amer Raza Naqvi, advocate  Qazi Muhammad Bashir, Additional Advocate General, Sindh  Imran Jagirani, DSP Clifton, Karachi on behalf of S.P. Clifton, Karachi along with Inspector Ali Raza, SHO, Darakhshan Police Station, Karachi
Date of hearing and order:	<b>29.12.2021</b>

## **ORDER**

In compliance of order dated 28.12.2021, respondent No.5 has procured the attendance of minor Hasan Syed Gillani, who is present in Court and has shown willingness to remain with his father / respondent No.5 for few years. He is aged about 12 years seven months (as per his date of birth i.e. 21.5.2009) and is competent enough to form his intelligent preference.

2. Heard learned counsel for the parties as well perused the material available on record and statement dated 28.12.2021 coupled with order of the Honourable Supreme Court of British Columbia dated 02.11.2021.

3. Learned counsel representing the petitioner has referred to paragraph 6 of the judgment dated 26.10.2018 passed by the Honourable Supreme Court in Civil Petition No.1034 of 2018 arising out of judgment dated 27.3.2018 passed by this Court in Constitutional Petition No.S-04/2017. For convenience sake, an excerpt of the said judgment is reproduced as under: -

*“6. Both the parties have made efforts through their learned counsels for an amicable settlement. Such settlement has finally been reached on the following terms and conditions: -*

*a) The custody of the ward shall remain with the mother in Karachi/Islamabad.*

- b) *The petitioner shall pay maintenance to the respondent for the upbringing of the ward in the sum of Rs.500,000/- per month. The maintenance amount shall be in addition to actual medical and educational expenses of the ward which shall also be paid for by the petitioner.*
- c) *In case the respondent wishes to travel outside Pakistan with the ward during school vacations, she may file an application before this Court seeking permission to do so. Such permission may be granted by this Court, if deemed appropriate on such terms, conditions, sureties and securities as this Court may deem appropriate.*
- d) *The petitioner shall have right of visitation and obtain temporary custody of the ward according to the following schedule:-*
- i) *Every alternate weekend from Saturday 9:30 a.m. to Sunday 7:00 p.m.*
  - ii) *Half of all school vacations.*
  - iii) *The first day of both Eids.*
  - iv) *Every/alternate birthday of the ward.*
- e) *The petitioner shall have free access to the teachers/tutors of the ward and shall be entitled to attend any and all sporting and extra curricular activities in which the ward may be participating. The respondent shall not under any circumstances or for any reason obstruct or hinder access and participation of the petitioner in such activities involving the ward.*
- f) *The petitioner shall within fifteen days from the date of this order withdraw the following cases pending before various Courts. For avoidance of doubt, it is clarified that the petitioner shall have the right to pursue his suit for declaration, cancellation and injunction in relation to property bearing No.23 and 23-A, DHA, Phase-I, Islamabad title (Syed Hashim Jawad Gillani. Vs. Scherazade Jamali and others) relating to benami ownership.*
- i) *G&W Appeal No. 23 of 2017 before the VIth Additional District Judge at Karachi South (Syed Hashim Gillani. Vs. Scherazade Jamali).*
  - ii) *G&W Appeal No. 30 of 2017 before the XIIth Additional District Judge at Karachi South (Syed Hashim Gillani. Vs. Scherazade Jamali).*
  - iii) *Suit No. 2267 of 2014 before the High Court of Sindh (Syed Hashim Gillani. Vs. Scherazade Jamali).*
  - iv) *Suit No. 1212 of 2014 before the High Court of Sindh (Syed Hashim Gillani. Vs. Scherazade Jamali).*

- v) *Suit No. 2385 of 2014 before the High Court of Sindh (Syed Hashim Gillani. Vs. Scherazade Jamali).*
- vi) *Suit No.1849 of 2015 before the High Court of Sindh (Syed Hashim Gillani. Vs. Scherazade Jamali).*
- g) *In case the petitioner shifts his permanent residence to Pakistan and starts living and working in Pakistan, he shall be entitled to file a fresh application for custody of the ward. If and when such application is filed the same shall be decided by the relevant Court on merits and strictly in accordance with law.*
- h) *In case, there is any other significant change, which materially affects the welfare of the ward, either of the parents may apply to the Court of competent jurisdiction for a fresh order regarding custody of the ward which shall be decided on merits and in accordance with law.*

4. The crux of the arguments of learned counsel for the petitioner is that this Court is bound to enforce the judgment of the Honourable Supreme Court under Article 187(2) of the Constitution and extensively read paragraph 6 of the judgment as discussed supra and submitted that the findings recorded in the said judgment has binding effect as provided under Article 189 of the Constitution as such the respondent No.5 cannot deviate from the terms and conditions of the statement noted in paragraph 6 (a) to (h), which explicitly provides that the custody of the ward i.e. Hasan Syed Gillani shall remain with the mother in Karachi / Islamabad.

5. At this stage, I asked the learned counsel for the petitioner that respondent No.5 is natural guardian of minor and the arrangements so made by the Honourable Supreme Court cannot be varied by this Court. Secondly, the minor Hasan Syed Gillani, who is present in Court, has shown his willingness to remain with the father for few years, petitioner's counsel replied to the query and submitted that respondent No.5 is bound to comply with the terms and conditions of amicable settlement arrived between the parties, which is now part of the judgment of the Honourable Supreme Court, therefore, the custody of the minor shall remain with the mother in Karachi / Islamabad.

6. To the aforesaid submissions, learned counsel representing respondent No.5 has objected to the maintainability of the instant petition on the premise that this Court has no jurisdiction to entertain the lis; that the Honourable Supreme Court has already taken cognizance of the matter; and, petitioner has already deviated from the terms and conditions of settlement as noted above, therefore, she is not entitled to the custody of minor at this stage. In support of his contentions, he relied upon a copy of judgment dated 02.11.2021 passed by the Honourable Supreme Court of British Columbia in family matter between the present parties and submitted that respondent No.5 has wrongly removed the custody of minor from Karachi to foreign country,

compelling the respondent-father to approach the Honourable Supreme Court of British Columbia under the Family Rules, whereby the Honourable Supreme Court of British Columbia has held as under: -

*“1. The Child Hasan Syed Gillani, born May 21, 2009 (the “Child”) has been wrongfully removed from Karachi, Pakistan by the Claimant Scherazade Jamali and the child has been wrong retained in British Columbia by the Claimant Scherazade Jamali.*

*2. Pursuant to Section 75 of the Family Law Act, S.B.C. 2011, c. 25, this Court recognizes the Order of the Pakistan Supreme Court pronounced October 26, 2018.*

*3. Pursuant to Section 77(2)(c) of the Family Law Act, S.B.C. 2011, c.25, the Child Hasan Gillani shall be returned to the jurisdiction of Karachi, Pakistan within seven (7) days of this Order by the Claimant Scherazade Jamali.*

*4. Pursuant to Section 77(3)(c) of the Family Law Act, S.B.C. 2011, c.25, the Claimant Scherazade Jamali shall be solely responsible for all costs associated with returning the Child Hasan Gillani from Canada to Karachi.*

*5. The Claimant Scherazade Jamali shall provide the Respondent Hashim Gillani, with copies, via email, of all flight itineraries for the flights booked within 12 hours of her booking same for the Child Hasan's to Karachi, which flights shall be booked within 24 hours of this Order.*

*6. If the Claimant fails to book flights for herself and the Child Hasan within 24 hours and provide proof of same to the Respondent, the Respondent Hashim Gillani shall be at liberty to make arrangements for himself or an agent to retrieve the Child Hasan from the Claimant for the purpose of returning Hasan to Karachi, and the Claimant shall present the Child Hasan to the Respondent within 48 hours of being notified of his arrival date and time.*

*7. The Claimant's counsel in Ontario, being the firm of Keyser Mason Ball LLP, shall immediately release to the Respondent all passports and identity cards for the Child Hasan hold by them in trust for the purpose of the Respondent facilitating Hasan's return to Pakistan.*

*8. Pursuant to Section 231 of the Family Law Act, S.B.C. 2011, c.25, that a police officer within British Columbia in any jurisdiction that Hasan may be located, the Royal Columbia Mounted Police and/or such law enforcement agencies that may have jurisdiction be directed and authorized to enforce any order of this Court made in this proceeding, including locating, apprehending and delivering the Child Hasan to the Respondent or such other designated individual on his behalf.*

*9. If the Claimant delivers the Child Hasan back to Pakistan, that upon arriving in Karachi, the Claimant shall be required to immediately give to the Respondent, or his agent, all passports and identity cards for Hasan so that he may deposit same with the Court in Karachi.*

*10. Pursuant to Rule 18-2 of the Supreme Court Family Rules, the Claimant's action is stayed, other than for the purpose of facilitating the return of the Child Hasan back to Karachi in the event any ancillary orders are required.*

*11. The Respondent shall have his costs of this application, such costs to be assessed.”*

7. During arguments both the parties have levelled allegations and counter allegations against each other so far as the implementation of the judgments of the Honourable Supreme Court and the Supreme Court of British Columbia are concerned, for which this Court has no jurisdiction to resolve the factual aspects of the case as discussed supra, however, it is for the parties to take resort of the competent Court of law having jurisdiction.

8. Primarily the purpose of filing this petition has been served as the minor Hasan Syed Gillani has been produced in Court, who has expressed his view as discussed supra, therefore, this Court cannot stretch further the instant proceedings on the premise that the Honourable Supreme Court of Pakistan has already settled the terms and conditions of settlement as noted above and there is nothing on part of this Court to dilate upon further on the issue involved in the matter.

9. So far as the allegations of threats of dire consequences on the part of respondent No.5 is concerned, he has submitted that he has neither caused any harassment to the petitioner nor he intends to do so in future, however, he submits that he will give his statement to the police official present in Court to that effect. Respondent No.5 has submitted that contempt proceedings are still pending against the petitioner for breach of undertaking given by her before the Honourable Supreme Court, therefore, no further order is required in this lis.

10. In view of the above facts and circumstances of the case, the parties may approach the Honourable Supreme Court insofar as the terms and conditions of their settlement are concerned. In principle, the instant petition has served its purpose on the premise that the minor has been produced in Court, so far as his custody is concerned, that has already been set at naught by the Honourable Supreme Court in paragraph 6(a) of the judgment. The competent authority of police department is directed to provide legal protection to the petitioner as and when required, however, subject to all just exceptions as provided under the law.

11. The petition stands disposed of along with pending applications in the above terms.

JUDGE