

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Cr. Misc. Application No.S — 453 of 2022.

DATE

ORDER WITH SIGNATURE OF JUDGE

04.07.2022.

FOR ORDERS ON M.A. 6044/2022.
FOR ORDERS ON OFFICE OBJECTION.
FOR HEARING OF MAIN CASE.

Mr. Khait Kumar Khatri Advocate for applicant.

This application is filed with the following prayers:-

- a. Rule nisi may kindly be issued and the concerned SSP Sanghar or SHO Police Station Sanghar may be authorized to arrange a surprised raid at the house of respondent No.1 situated in Naka No.4 Christian Colony Bakhoro Road Sanghar Taluka & District Sanghar, for the search, recovery and production of the detenu in this Honourable Court and after recovery of detenu Saad, his custody may be handed over to the applicant being real mother.

Learned counsel submits that the detenu Saad aged about 02 years was forcibly snatched away by respondent No.1 (father) from the applicant. He further submits that the mother / applicant being the natural guardian is entitled to have the custody of the minor.

Perusal of order dated 1.2.2022 reflects that learned 1st Additional Sessions Judge Sanghar, while disposing of the application under section 491 Cr.P.C. has observed as under:-

“At the request of applicant, this Court directed to the respondent to handover custody of minors / suckling babies to applicant for meeting purpose, who is real mother of both minors, on which the respondent No.1 handed over custody of both minors to applicant. As well as the custody of minors was handed over to applicant for meeting purpose, the minor/suckling baby Sameer remained silent, and did not cries, but the minor Saad started hue and cry in the lap of his mother (applicant), who started crying continuously, then the applicant returned him to the respondent No.1, and as soon as he came in the lap of his father (Respondent No.1), he was seen very happy, calm and silent in the lap of his father. Since the minor Sameer is suckling baby, aged about one and half years, did not resist nor was seen unhappy in the lap of his mother, who appears to be in improper custody with the Respondent

No.1, therefore, the custody of minor Sameer be handed over to applicant on temporary basis, who is also his real mother, while though the applicant is real mother of minor Saad, yet he was seen unhappy and was crying in the lap of applicant, while he was seen very happy and was silent / calm when he was returned back to respondent No.1, who is his father, therefore, it is ordered that custody of minor Saad would remain with the respondent No.1 on temporary basis. The applicant is directed to execute P.R bond in the sum of Rs.200,000/- for production of minor Sameer as and when required by any Court of law. The father and mother of the minors are at liberty to approach to the competent Court of law under Guardian and Wards Act for permanent custody etc: of respective minors, if they desire so, and the competent Court of law would decide the same matter(s) in respect with minors in accordance with law, and this order would not effect and such proceedings of G and W Applications if filed by the parties.”

Record reflects that applicant again filed application under section 491 Cr.P.C. before learned 1st Additional Sessions Judge Sanghar, for the custody of minor Saad, the same was dismissed vide order dated 23.06.2022, by advising the applicant to approach the Guardian & Wards / Family Court for redressal of her grievance.

When learned counsel for applicant was confronted with the orders dated 1.2.2022 and 23.6.2022 passed by learned 1st Additional Sessions Judge Sanghar, on the applications under section 491 Cr.P.C. filed by the applicant, learned counsel candidly conceded that applicant did not approach the Guardian & Wards Court for the custody of minor Saad.

It is an admitted fact that applicant has twins children namely Saad and Sameer both aged about 02 years. The custody of minor Sameer was handed over to the applicant by learned 1st Additional Sessions Judge Sanghar, whereas the custody of minor Saad was refused to the applicant for the reason that minor Saad was crying in the lap of her mother (applicant).

Under the circumstances it has come on record that the minor Saad was not forcibly snatched by the respondent No.1 (father) but was handed over by the learned 1st Additional Sessions Judge Sanghar. Provisions of Section 491 Cr.P.C. were not available for declaring any person as guardian or for determining all the questions relating to the custody of minor because the final

decision of the regular custody was to be decided in the proceedings initiated by the party claiming the custody of the minor(s) before the Guardian Court.

In view of above discussion, I am of the opinion that applicant has failed to make out a case for wrongful confinement of minor Saad for his recovery / production. Even otherwise the applicant has remedy to move an application for interim or permanent custody before the Guardian Court under the Guardians & Wards Act, 1890 to obtain custody of her child Saad from the father, therefore, the instant application being misconceived is dismissed in limine.

JUDGE

A.