

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

**Cr. Misc. Appln. No. S – 96 of 2020**

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Date

Order with Signature of Hon'ble Judge

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**For hearing of case**

1. For hearing of main case
2. For hearing of MA No.1060/2020 (Rule-Niss)

**16.03.2020**

Ms. Farzana Bhatti Advocate a/w Applicant  
Mr. Fida Hussain Sahito Advocate for private respondents 4&5  
Mr. Shafi Muhammad Mahar, DPG for the State

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Through this Criminal Miscellaneous Application, the applicant, being real mother of the alleged detainee Baby Ume-Rabab aged 05 years, seeks her custody, as she has been kept under wrongful confinement by the private respondents.

Learned counsel for the applicant mainly contended that the private respondents have kept the alleged detainee / baby under wrongful confinement, whereas, the applicant being the real mother of the minor is entitled to retain her interim custody. She lastly contended that Rule-Nissi may be issued for production of the detainee.

2. On the other hand, learned counsel for the private respondents 4 & 5 submits that the instant Criminal Miscellaneous application is not maintainable, whereas, the jurisdiction for deciding the custody of the minor lies with the Guardian and Wards Court. He further contends that the private respondent Muhammad Ibrahim being the grand-father of the detainee Ume-Rabab has already filed an application under Section 7, 25 R/w Section 10 of the Guardian and Wards Act, 1890 for appointment of the Guardian before the Court of learned Family Judge, Khairpur, which is pending adjudication, but the applicant has wrongly approached this Court.

3. Learned DPG appearing for the State also supported the contentions of the learned counsel for the private respondents and opposed the instant Criminal Miscellaneous application.

4. I have heard the learned counsel for the applicant as well as learned counsel for private respondents 4 & 5 and learned DPG for the State. The applicant is real mother of the detainee, and after the death of her husband, she has contracted second marriage with one Muhammad Sahib in the year 2016. The alleged detainee is baby girl who is stranger to the second husband of the applicant, whereas, the private respondent No.4 Muhammad Ibrahim is the grandfather of the detainee, who (respondent No.4) has already filed an application under Section 7 & 25 r/w Section 10 of the Guardian and Wards Act, 1890 before the Family Judge Khairpur i.e. G & W Application No.08/2020, for appointment of guardian for the minor baby Ume-Rabab, which is pending adjudication. The dispute regarding the welfare of the child lies with the Guardian and Wards Court, therefore, the applicant has right to contest the matter before the said Court where such litigation is already pending. Consequently, the instant Criminal Miscellaneous Application is dismissed. However, the parties are directed to appear before the learned Family Judge Khairpur and contest their case in accordance with law.

Judge

ARBROHI