

**ORDER SHEET**  
**THE HIGH COURT OF SINDH KARACHI**  
**C.P S-1115 of 2023**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE(S) OF JUDGE (S)</b>
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1. For orders on office objection.
2. For hearing of main case.

**21.11.2023**

Mr. Qadir Hussain, advocate along with Ms. Shehla Anjum, advocate for the petitioner.

Mr. Talib Ali Memon, APG along with Noor Mustafa, SHO Lateefabad, Hyderabad along with baby Maryam Ansari.

Respondent No.5 is present.

Mr. Sharfuddin Jamali, Addl.A.G Sindh.

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Mr. Shams-ur-Rehman, advocate files power on behalf of respondent No.5, taken on record.

Petitioner Mst.Darakshan brought this lis for the recovery of her minor daughter Baby Maryam aged about 9 years from the custody of a private respondent.

Today Noor Mustafa SHO of PS Latifabad, Hyderabad has brought the custody of minor baby Maryam Ansari, whose custody has been handed over to the petitioner-mother, who is present in Court along with her counsel.

I have heard the parties and perused the material available on record.

The record reflects that the petitioner is a real mother and natural guardian of a minor and has preferred this Petition for the custody of the minor, which has been handed over to her in Court. Admittedly, the minor is a female child of 9 years old and would require constant care; indeed, her mother has developed an emotional attachment with the minor child and the issue of the welfare of the minor is yet to be decided by the learned Guardian and Wards Court for which the parties have to approach. It is well settled now that proceedings under section 491, Cr.P.C. are not available for declaring any person as guardian or for determining all the questions relating to the custody of minors because the final decision of regular custody is to be decided in the proceedings initiated by the parties claiming the custody of the minors before the Guardian and Wards Court. It is well-settled law that paramount consideration while deciding the question of custody of the minor is the welfare of the minor which has to be seen in view the

age, sex, and religion. Welfare includes his/her moral, spiritual, and material well-being. While considering what is the welfare of the minor the court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian, his/her nearness of kin to the minor, and the preference of the minor if he or she is intelligent enough to make it.

I am of the view that the purpose of filing this petition is served as the minor has been produced before this Court and handed over to the petitioner-mother.

I am satisfied with the assertion of the petitioner-mother that she has taken custody of the minor in Court.

I have noticed that under similar circumstances Supreme Court vide an unreported order dated 13.07.2020 passed in the case of Mst. Beena Versus Raj Muhammad, etc. (Civil Petition No. 4129/2019) has decided the issue about the custody of the minors with the following dicta.

*“16. During the hearing, the learned counsel for the father submitted that the right of the hizanat of the child vesting in the mother is nearly over. In response to our query, we were told that the judgments of the learned Family Judge and the learned Appellate Judge were not abided by, as the father retained the custody of the child. Therefore, we cannot accept such a preposterous contention because in doing so we will be rewarding those who take the law into their own hands and violate the decisions of courts vested with jurisdiction. Every judgment must be abided by unless it is suspended and/or set aside by a higher court. The father dragged out the proceedings and then unnecessarily invoked the constitutional jurisdiction of the High Court. There was no reason for the High Court to exercise its constitutional jurisdiction in terms of Article 199 of the Constitution and to set aside perfectly well-reasoned and legal judgments. As regards the learned counsel for the father, contending that the child has an aversion to the mother, just goes to show that the father has filled the child’s innocent mind with fear and/or dread, and demonstrates that he has not been fair to either the child or the mother.*

*17. Therefore, for the reasons mentioned above we have no hesitation in setting aside the impugned judgment of the High Court dated 16 September 2019. Consequently, respondent No. 1 is directed to hand over the physical custody of the minor, Muhammad Rayyan, to the petitioner within seven days from the date of this order, failing which the concerned police officer and the social welfare officer will ensure compliance; a copy of this order be sent to the learned Advocate-General, Khyber Pakhtunkhwa for onward transmission of this order to the concerned and to oversee compliance. In view of the important issues decided in this petition with regard to the custody of minors the Registrar of the Peshawar High Court is directed to provide copies of this order to all family/guardian judges and Judges of the Peshawar High Court. This petition is converted into an appeal and allowed in the above terms.”*

In view of the statement of the parties present in the Court, the petitioner is directed to take care of the minor, and in the meantime, the petitioner shall not take away the custody of the minor out of the jurisdiction of this Court. In the intervening period subject to tentative payment of maintenance of the minor @ Rs.5000/- per month to be paid by the father of the minor without fail, till final adjudication of the matter by the learned trial Court if the aggrieved party approaches. The SHO concerned is directed to ensure the delivery of maintenance

of the minor by the father. Respondent No.5 father is present in Court states that he may be allowed to meet with her daughter Maryam Ansari on weekly basis. Order accordingly. On the aforesaid proposition, I am fortified by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Humayun Hassan v. Arslan Humayun and another, (PLD 2013 SC 557). The

In the light of the facts and circumstances mentioned above, the instant petition has served its purpose which is hereby disposed of along with the pending application(s).

JUDGE

zahid/\*