

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application. No. S-207 of 2024

(Deedar Ali Khoso Vs. The State & others

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
-----------------	--------------------------------

1. For Orders on office objection.
2. For Orders on MA No. 1876/2024 (Rule Nisi)
3. For hearing of main case.

Date of hearing and Order 20-05-2024

Applicant present in person.

Mr. Gulzar Ali Malano, Assistant P.G for the State. Along with Police Official PS Naushahro Feroze

ORDER.

Adnan-ul-Karim Memon J:- The application is filed by the applicant to issue a writ of Habeas Corpus directing the respondent-police officials to produce her minor daughter namely baby Iqra aged about 02 years to enable him to take her custody.

2. According to the averments of the applicant, the wife of the applicant namely Mst. Samina has taken away the minors' custody. The applicant came into contact with her for returning the custody, but she refused to return the custody of the minor to him and has disappeared, after conversion to her previous religion, compelling him to file Criminal Miscellaneous Application No. 31 of 2024 before the learned Ex-Officio Justice of Peace/Sessions Judge Naushahro Feroze, who refused to issue such writ vide order dated 12.1.2024.

3. A police official present in court states that the custody of baby girl is with her mother. If this is the position of the case, it cannot be said that the minor baby is in illegal custody to issue writ of habeas corpus.

4. I have heard learned counsel for the parties and perused the material available on record.

5. The record reflects that the applicant is a real father and natural guardian of a minor namely baby Iqra. Applicant preferred Habeas

Corpus Application before the learned Sessions Judge Naushahro Feroze, which was dismissed vide order dated 12.01.2024 with direction to approach the learned Guardian and Wards Court.

6. Admittedly, the minor is a female child of 2 years old and would require constant care of her mother; and the issue of welfare of the minor is yet to be decided by the learned Guardian and Wards Court if approached by the parties. It is well settled now that proceedings under section 491, Cr.P.C. is not available for declaring any person as guardian or for determining all the questions relating to the custody of a minor because the final decision of regular custody was to be decided in the proceedings initiated by, the parties claiming the custody of the minor before the Guardian court. It is well-settled law that the 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.

7. I am of the view that the purpose of filing this CrI. Misc. Application is served as the custody of the minor is with her mother as informed; and, prima facie the minor is no more in illegal custody as discussed in the preceding paragraph. Primarily, in the cases, concerning the custody of a child, this Court is not required to go into the intricacies/technicalities of the matter in constitutional jurisdiction and should confine its findings to the extent of the welfare of the child/minor which is a paramount consideration and it is for the learned Guardian and Wards Court to take appropriate measures in this regard.

8. In view of the above, without touching the merits of the case, I am satisfied with the arrangement made by the learned Sessions Judge Naushahro Feroze which is just fair, and equitable and is not only in the interest of the minor but also reasonably protected the rights of both the

parties by directing the applicant to approach the learned Guardian and Wards Court.

9. The controversy as raised by the parties needs to be looked into by the learned Guardian and Wards Court concerned for the custody of the baby Iqra aged about 02 years, if approached and the decision thereof shall be made within a reasonable time, keeping in view the welfare of minor strictly under law.

10. In the light of the facts and circumstances mentioned above the instant Crl. Misc. Application is disposed of along with the pending application(s), in the above terms.

J U D G E

Nasim/P.A