

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

Cr. Misc. Application No.S-749 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(s)
------	----------------------------------

For orders on office objections.

For hearing of main case.

21.11.2025

Mr. Bashir Ahmed Qureshi, Advocate for applicant.

Mr. Naseer Ahmed Samo, Advocate files power on behalf of respondent No.3, which is taken on record.

Ms. Rameshan Oad, Deputy Prosecutor General, Sindh a/w SIP Raza Muhammad Soomro and ASI Liaquat Ali PS Nasim Nagar Hyderabad.

=

ARSHAD HUSSAIN KHAN, J:- The applicant has filed this Cr. Misc. Application under Section 491 Cr.P.C, for the custody of alleged detainee Muhammad Faizan S/o Muhammad Sultan Tipu aged about 03 years.

2. It is the case of the applicant that she was married to respondent No. 3 on 28.07.2021, and out of the said wedlock she gave birth to the detainee on 27.09.2022. It is alleged that thereafter respondent No. 3, in collusion with his parents, used to maltreat and torture the applicant. Consequently, the applicant's father came to the house of the respondent and took the applicant back with him, after which the applicant filed a Suit for Dissolution of Marriage, which has already been decided on 16.09.2025. It is further alleged that the detainee is presently in the illegal custody of respondent No. 3, and therefore, the applicant, being the biological mother of the detainee, has approached this Court through the instant Cr. Miscellaneous Application.

3. In response to notice, the police officials are present and produced the alleged detainee Muhammad Faizan before this Court.

4. Learned counsel for the applicant has argued that the applicant is entitled to custody of minor who is in improper custody of respondent No.3, therefore, the applicant is entitled to the custody of minor. Learned D.P.G has supported the case of the applicant.

5. Conversely, learned counsel for the respondent No.3 has contended the custody of minor with Respondent No.3 is not illegal rather lawful, as such, prays for dismissal of instant Cr. Misc. Application.

6. In my opinion in the cases pertaining to the custody of a child, the courts are not supposed to go into the technicalities of the law and they should decide the case keeping in view the facts and circumstances of each case placed before it for the decision mainly taking into consideration welfare of the child. Although ordinarily an application under section 491 Cr.P.C is not found to be competent when there is no element of illegal custody by the father of his own children but in the welfare of the child as well as to ensure that the rights which have been conferred upon the children are fully protected in a suitable manner, the courts could also pass appropriate orders in exercise of its inherited jurisdiction. In case of **Muhammad Naseer Humayon Vs. Mst.Syeda Ummatul Khabir (1987 SCMR 174)** this court has changed the custody in exercise of the jurisdiction under section 491 Cr.P.C and against the said order petition for leave to appeal was filed before Honourable Supreme Court of Pakistan but leave was declined keeping in view the fact that the parties have parted their ways and the minors are of a tender age. Following the observation from the reported judgment, I am of the opinion in the interest of justice as well as for the welfare of the minor the applicant being mother is entitled to get her custody.

7. I am of the considered view that the applicant has made out a case for custody of minor. In this respect reliance may respectfully be placed on case law reported in **1987 P.Cr. L J-1318, 1991 P.Cr. L J-758, 1997 P.Cr. L J-581 and 2000 P.Cr. L J-1685.**

8. The respondent No.3 can be said to be having custody of minor in an illegal way but also in the way he perhaps snatched the custody of minor from the applicant would be called as improper custody. Awarding of custody under section 491 Cr.P.C is always subject to regulation of custody by the guardian court, therefore I feel it proper to order that the custody of alleged detainee / minor Muhammad Faizan aged about 03 years be handed over to the applicant by respondents No.3 subject to its regulation by Guardian Court, for that purpose respondent No.3 is at liberty to seek remedy before the court of law having jurisdiction. Consequently, present Cr. Misc. Application is disposed of, as having been served its purpose.

JUDGE

Hafiz Fahad