ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Miscellaneous Application No. S-398 of 2025

Date	Orders with signature of Judge

Before:
Mr. Justice Ali Haider 'Ada'

1. *For orders on M.A No. 5203/2025. (Urgency Application)*
2. *For orders on office objection.*
3. *For orders on M.A No. 5151/2025. (Exemption Application)*
4. *For hearing of main case.*

14-11-2025

Mr. Farhat Ali Bugti, Advocate for the Applicant.

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1. Urgency application is allowed.

2. to 4. Through this application, the applicant, Mujahid Hussain, seeks directions for securing the presence of Mst. Reema (his wife) before this Court for her protection and for recording her statement. Prior to filing the present application, the applicant had instituted Constitutional Petition No. S-393/2025 before this Court, which was dismissed for want of jurisdiction on the ground that an alternate remedy was available. Even earlier, the applicant had approached the learned Sessions Judge, Larkana, under Section 491 Cr.P.C. for the same relief, and the said application was entrusted to the learned Additional Sessions Judge, Ratodero. Pursuant to the proceedings under Section 491 Cr.P.C., the learned Additional Sessions Judge, Ratodero, issued directions for the production of the alleged detainee, namely Mst. Reema. In compliance, she appeared before the Court on 09.09.2025 and her statement was duly recorded. For ready reference, her statement is reproduced as under:-

> *"My name is Mst. Reema, and I am listed as a detainee in the application, I along with my sister namely Uzma voluntarily appeared before this Court and I am residing with her. My brother Ghulam Abbas is threatening me. I wish to go with my sister Mst. Uzma, she is present in the court. I am sui-juris lady and making this statement voluntarily, without any fear, pressure, or inducement. Application Mujahid Hussain is my husband. I kindly request that legal protection against harassment caused by my brother Ghulam Abbas. This is my statement."*

After recording her statement, the learned Additional Sessions Judge, Ratodero, disposed of the matter in view of the express desire of the alleged

detainee and further directed the concerned S.H.O to provide her legal protection in accordance with law.

Learned counsel for the applicant contends that the applicant was not present before the trial court at the time when the order was passed, and therefore, the matter requires reconsideration. He further submits, as stated in ground No. 5 of the instant application, that the alleged detainee was present in the applicant's house at about 04:00 p.m, on 01.08.2025, when the private respondents, armed with deadly weapons, forcibly restrained and took away his wife. Learned counsel adds that if the alleged detainee is directed to be produced before this Court for recording her statement, then after doing so she may be allowed to go wherever she wishes. He emphasizes that the applicant, being her lawful husband, has every right to seek her production and protection, and has approached this Court with clean hands.

Heard and perused the record.

If, the concept of the writ of habeas corpus is perused, it emerges as one of the most fundamental safeguards against unlawful detention. William Blackstone, in the eighteenth century, described *habeas corpus* as a **"great and efficacious writ in all manner of illegal confinement,"** emphasizing its central role in protecting personal liberty. *Commentaries on the Laws of England*, Vol. 3 (1765–1769), pp. 129–137, University of Chicago Press (1979).

Even, the writ continues to be recognized as a cornerstone of individual freedom and remains universally known and celebrated as the ***'Great Writ of Liberty.'*** See Eric M. Freedman, *Habeas Corpus: Rethinking the Great Writ of Liberty*, New York University Press (2001), p. 1.

These authoritative references reaffirm that the writ of habeas corpus is intended solely to ensure that no person is held in unlawful or coercive custody, and once the alleged detainee appears before the Court and confirms her free will and independent status, the purpose of the writ stands fulfilled.

Further, in elaboration, reference may be made to Article 9 of the ***Universal Declaration of Human Rights***, which unequivocally provides that "No one shall be subjected to arbitrary arrest, detention or exile." See: United Nations (10 December 1948), *Universal Declaration of Human Rights*.

This international recognition reinforces the constitutional and judicial mandate that the writ of habeas corpus serves as a vital remedy to protect individuals against unlawful or arbitrary deprivation of liberty. The principle underlying both the UDHR and the Great Writ is that personal freedom is inviolable, and any form of detention must withstand strict judicial scrutiny.

Further, under the Law of England, the historical foundation of the remedy is embodied in the Habeas Corpus Act 1679 (31 Cha. 2 c. 2), enacted by the Parliament of England during the reign of King Charles II. The Act—formally titled *"An Act for the better securing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas"*was a landmark statute designed to ensure that no person is detained without lawful authority and that every detainee has the right to be promptly brought before a court to justify the legality of such detention. This foundational legislation strengthened procedural safeguards against unlawful imprisonment and firmly established habeas corpus as a cornerstone of personal liberty within the English legal tradition, principles which continue to influence modern constitutional and human rights jurisprudence globally, including the contemporary understanding of habeas corpus as a swift and effective remedy against arbitrary detention.

In the early days of Rome, the Tribunes, magistrates appointed to protect the plebeians against the oppressions and injustices of the ruling patrician class, had great power given to them. This was vitally necessary, for the patricians, through their control of office, by virtue of wealth and birth, and through their interpretation of the laws, controlled not alone the affairs of the city but the lives and destinies of its people. The Tribunes were sole arbiters of the defendant's fate. They had complete power over the people. They could summon any citizen before them for trial, or could discharge the debtor from arrest. Here, perhaps, because of the exigencies of the situation in which Rome found itself, lies the germ of that idea that justice shall not be delayed. In the condensation and codification of Roman court decisions known as the Pandects or the Digest, which was compiled by order of Justinian, we find a writ so similar to habeas corpus that there can be no doubt that in Rome lies the true origin. A learned writer I on the subject says "The writ (of habeas corpus) is somewhat similar to the Praetorian Interdict of the Roman Civil Law, "de honine liberoexhibendo," in which the praetor ordered,

when it was made to appear to him that a freeman was restrained of his liberty contrary to good faith, that he be liberated. Church also conservatively states that in the Roman interdict or writ "de libero homine exhibendo" we may discern the origin of our writ of habeas corpus. St. John's Law ReviewSt. John's Law Review Volume 9, December 1934, Number 1 Article 3Historical Aspects of Habeas Corpus Historical Aspects of Habeas Corpus Albert S. Glass

In Pakistan, the issuance of a writ is an exercise of the extraordinary Constitutional jurisdiction of the Superior Courts. A writ of *habeas corpus* may be issued by any High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, which expressly empowers the High Courts to require the production of a person alleged to be unlawfully detained and to determine the legality of such detention. This constitutional mandate reinforces the fundamental right to liberty and serves as a vital mechanism for preventing arbitrary or illegal confinement. Further, in the case Master Abdul Rashid v. Sub-Martial Law Administrator, Sector 2, Rawalpindi and 3 others (PLD 1980 Lahore 356), it was held that:

> *10. Prior to July, 1954, the 'habeas corpus' jurisdiction vested in the High Courts under the provisions of section 491 of the Code of Criminal Procedure, 1898. The High Courts were for the first time conferred jurisdiction to issue writs in the nature of habeas corpus, by the insertion of section 223 in the Government of India Act, 1935, by the Government of India (Amendment) Act, 1954. This jurisdiction was continued in the same form b Article 170 of the Constitution of 1956. The Constitutional jurisdiction in the nature of 'habeas corpus', presently vesting in the superior Courts was initially conferred by Article 98 of the Constitution of 1962, and has been continued as such by Article 199 of the Constitution of 1973. See Mumtaz All Bhutto v. D. M. L. A. (1), Muhammad Ajmal Khan v. Muhammad Shafaat (2). The Constitutional jurisdiction under Article 199 is similar to, but wide than the jurisdiction conferred by section 491 of the Code of Criminal Procedure, 1898.*

While discussing the jurisdiction of habeas corpus under the Constitution, it is equally important to note that under the scheme of criminal procedure, the writ of habeas corpus is also available in statutory form under Section 491, Cr.P.C. The said provision empowers the High Courts as well as the Sessions Courts to issue directions for the recovery of persons illegally or improperly detained; therefore, in the criminal procedural context, Section 491 Cr.P.C. functions as a statutory embodiment of the habeas corpus principle, supplementing the constitutional remedy under Article 199. Both jurisdictions exist to ensure that personal liberty is not compromised by unlawful or

improper detention, but neither can be used as a substitute for matrimonial, civil, or custody proceedings when the alleged detainee has already appeared before a competent court, recorded her statement of free will, and has been granted protection.

In view of the above aspects, in the present matter, it becomes clear that the alleged detainee had already been produced before the competent forum and had recorded her statement on 09.09.2025. The contention raised by the applicant regarding her alleged restraint on 01.08.2025 stands discredited, as the alleged detainee did not support this allegation in her statement. On the contrary, she expressly stated that, being *sui juris*, she wished to go with her sister, Mst. Uzma, without any fear, pressure, or inducement. Therefore, the circumstances do not attract or fulfill the essential ingredients required for invoking the writ of habeas corpus. Furthermore, if the applicant failed to appear before the trial court, it was his own duty to remain vigilant. The order sheet dated 09.09.2025 reflects the presence of counsel for the applicant. Even today, when the matter is called, the applicant remains absent despite the presence of his counsel. Courts cannot be used as a tool to unnecessarily drag individuals, especially women, into litigation merely to exert undue pressure. Such practices are deprecated. Once the competent forum has already adjudicated the matter, recorded the statement of the alleged detainee, permitted her to go with her sister, and provided her protection, there remains no justification to interfere with that order or to compel her appearance again. The record further indicates that if the applicant seeks any matrimonial or custody-related relief, his proper remedy lies before the competent family court rather than resorting to misconceived applications under the guise of habeas corpus.

In view of the facts and circumstances discussed above, this application is dismissed in *limine*.

JUDGE

Abdul Salam/P.A ****