ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Crl. Misc. Appln. No.S-203 of 2026.

Date	Order with signature of Judge

For hearing of M.A.No.3907/2026

20.07.2026

Mr. Ishfaque Ahmed Almani, advocate for applicant (present through video link).
Mr. Imtiaz Ali Channa, advocate for the private respondents (present through video link).
Mr. Sardar Ali Solangi, D.P.G.

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JAWAD AKBAR SARWANA, J.:- This is a disposed of matter which arose from a Cr. Misc. Application under Section 491 Cr.P.C. filed by the mother-Mst.Amina (Amna) of the detainee, Baby Eman (interchangeably referred to as also "Baby Erum") in the High Court of Sindh, Circuit Court, Hyderabad, which application was disposed of by me on 07.05.2026. The father of the minor detainee, Aijaz Ahmed Rodnani/Respondent No.3, has filed this misc. (review) application no. 3907/2026 seeking review of the said disposal Order dated 07.05.2026.

2. At the time when the Order dated 07.05.2026 was passed by me, which is subject to review, the same was based on the material available on record at the time, which included, inter alia,

(i) the order dated 14.11.2024, passed by the Additional Sessions Judge-IV, Dadu, in the detainee, mother-Amina's Crl. Misc Application No.360 of 2024 filed under Section 491 Cr.P.C., concerning Baby Eman-Erum, which was impugned before the High Court in this lis (hereinafter referred to as "the impugned Order"); and,

(ii) Written Objections filed on 18.04.2026 by the father of the detainee minor Baby Eman-Erum, Aijaz Ahmed Rodnani/Respondent No.3, attaching an order dated 18.02.2026 passed by the Guardian and Wards Judge, Johi in G&W Application No.13/2025 also filed by Mst. Amina (Amna), in which the G&W Judge, Johi, disposed of the said G&W Application u/s 25 of the G&W Act, 1890 (hereafter referred to as the "G&W Judge's First Order").

3. Based on the above record, I passed the following order on 07.05.2026:

> "***07-05-2026***
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> *Ishfaque Ahmed Almani, advocate for the applicant.*
> *Ms. Sana Memon, Assistant Prosecutor General, Sindh.*
> *Respondent No.5 Mst. Jamalan is present in person.*
> *Applicant is present in person.*
> *ASI Sadam Jokhio, PS Johi.*
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> *Applicant, Mst. Amna has filed this Criminal Miscellaneous Application seeking production of her daughter, Baby Eman, aged about five years, from respondents No.4 and 5/Dada and Dadi (grandfather and grandmother). It transpires that pursuant to the order dated 18.02.2026 passed by the Guardian Judge, Johi, in G&W Application No.13 of 2025, the custody of one minor "Baby Erum" (clarified by the parties present, is the detenue Baby Eman) was handed over to the applicant, Mst. Amna. However, it further transpires that subsequently the Dada and Dadi took away the minor detenue.*
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> *Today, ASI Sadam Jokhio of PS Johi has produced Baby Eman, whose custody is handed over to the mother/applicant, and she may retain the custody temporarily until the matter is decided and/or taken up, once again, by the Guardian and Wards Court, on its own merit.*
>
> *This Criminal Miscellaneous Application stands disposed of in the above terms.*"

4. Thereafter, on 14.05.2026, the father of the detainee, Aijaz Ahmed Rodnani/Respondent No.3, filed this misc. (review) application attaching for the first tine an order dated 18.02.2026, passed by the same G&W Judge, Johi, in the same G&W Application No.13/2025, wherein the very same G&W Judge passed the second order dated 18.02.2026 on an application under section 12 of the G&W Act, 1890, filed by the mother-Amina (Amna) in connection with seeking visitation with the minor baby Eman-Erum (hereinafter referred to as the "G&W Judge's Second Order") .. This G&W Judge's Second Order was not submitted by the father/Respondent No.3 in the Objections filed by him on 18.04.2026. Neither party had shown/disclosed the G&W Judge's Second Order at the time I passed the Order dated 07.05.2026. The copy of the Second Order was filed after I had passed the Order dated 07.05.2026. As, tentatively, the G&W Judge's First and Second Orders, when read together with the pleadings in Cr. Misc. Appln. No-S-203/2026, filed in this (High) Court, contained certain inconsistencies concerning custody/visitation of Baby Eman-Erum, and also Baby Abid, as well, I issued directions to the G&W Judge, Johi, to

clarify the matter as per the following order dated 14.05.2026 (reproduced hereinbelow):

> "***14.05.2026***
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> *Mr. Imtiaz Ali Channa, Advocate for respondent No.3.*
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> *1. Urgency granted.*
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> *2. Counsel for the respondent No.3 has placed on record a certified true copy of order dated 18.02.2026. This is an entirely different version of the same order of even date passed by the same Court. The earlier version was placed by the respondent Written Objections dated 30.04.2026. He (Respondent No.3) has now placed a fresh version of the order dated 18.02.2026 which is claimed was corrected by the Family/Guardian Judge, Johi after he filed an application for correction of the same. He undertakes to submit certified copy of such application as a result of which the fresh version of the order dated 18.02.2026 was passed. He submits that based on the corrected fresh version of the order dated 18.02.2026, the applicant mother/petitioner was granted merely right of visitation and not custody.*
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> *Issue notice to the applicants as well as remaining respondents as well as A.P.G. As both orders bear the same date, call report from the concerned Family Judge, Johi in Guardian and Wards Application No.13/2025 to submit report concerning the two different versions of the same order dated 18.02.2026.*
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> *Relist on 21.05.2026 at 01:00 p.m.*"

5 The Senior Civil Judge/G&W Judge, Johi (who is not the same G&W Judge, Johi involved in the First and Second Orders), submitted the following Report dated 01.06.2026:

> *"From perusal of R and Ps, it is reflected that on 18.02.2026, the predecessor family Judge has passed three orders, one order for restoration of the side of opponent Aijaz, secondly on application under Section 12 of the Guardian and Wards Act thereby allowing the interim meeting and thirdly order finally dispose off main G and W application in view of the compromise filed without affidavit of the parties. All three orders are available in the R and Ps of the court file hence are genuine.*
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> *It is also respectfully submitted that the family Judge/Second Civil Judge, Johi then having Family jurisdiction has been dismissed from the service by the Honourable High Court of Sindh vide order dated 367/Conf-VI-Z-23(926)JM Karachi dated 25th March 2026, and the family jurisdiction has been conferred to undersigned on 31.03.2026."*

6. The new G&W Judge's Report dated 01.06.2026 disclosed that the same G&W Judge passed yet another (third) Order on 18.02.2026 in the same G&W Application No.13/2025 ("G&W Judge's Third Order"). The current G&W Judge submitted neither the copy of the G&W Judge's

(missing) Third Order nor R&P to the High Court. However, by the same token, once again, neither Counsel for the detainee-mother nor the detainee's father disclosed the G&W's Third Order. Consequently, when this matter was referred to me, and I commenced hearing via video link, the detainee's father-Aijaz Ahmed Rodnani/Respondent No.3, during the course of arguments, on 13.06.2026, filed a Statement on even date attaching a copy of the G&W's Third Order, also dated 18.02.2026, which was passed by the same G&W Judge, Johi, who passed the First and Second Orders. The G&W Judge's Third Order essentially reopened the side of the detainee-father, which had been closed.

7. Counsel for the detainee father has pleaded that the bench was misled during the hearing of the Cr. Misc. Appln., leading to the Order dated 07.05.2026, which is subject to review. He contends that as he was not appearing before the G&W Judge, three different Orders were passed on 18.02.2026, which was not in his knowledge. It was only after the Order dated 07.05.2026 was passed by me, which is subject to review, that he came to know about the Second and Third Orders. He contends that the observations set out in my Order dated 07.05.2026 are contrary to the terms of custody and visitation which were agreed between the mother and father of the detained Baby Eman-Erum, including Baby Abid. The impugned Order dated 14.11.2024, impugned in this (main) lis, passed by the Additional Sessions Judge-IV, Dadu concerns Section 491 Cr.PC., and that impugned Order is more than two (2) years old and does not record the latest and up-to-date position as per the First, Second and Third Orders. Therefore, the Order dated 07.05.2026 ought to be reviewed and modified.

8. Counsel for the mother has opposed the submissions raised by the Counsel for the father for review of the Order dated 07.05.2026, and submits that the said order is fair, proper, according to law and does not require review.

9. Heard Counsel online and perused the application and additional documents. At the outset, it is apparent from the record that the Order dated 14.11.2024, which was impugned in this lis, clearly did not reflect the updated legal position between the parties as pleaded in the Cr. Misc. Appln. on 17.04.2026, the date of institution of this Cr. Misc. Appln, under

Section 491 Cr.P.C. The legal position between the parties in 2024 was very different from the legal position concerning the custody and rights of visitation of the children as per the First, Second and Third Orders dated 18.02.2026. Indeed, the three Orders dated 18.02.2026 were placed before this (High) Court in piecemeal, and on the prompting of the Court. The detainee-child's mother suppressed all three Orders even though the main G&W application was filed by her in G&W Court in Johi in 2025; two out of the three interlocutory applications, which were heard by the same G&W Judge, Johi, were also filed/moved by her in the main proceedings in the same Court; and stood decided as of February 2026 by the very same Court. Yet the information was apparently concealed from the Court in the Cr. Misc. Appln filed by the mother of the detainee for the production of Baby Eman-Erum in the High Court. Equally, the detainee—the child's father—also did not disclose all three Orders dated 18.02.2026, mentioned above. The conduct of the parties does not draw any sympathy. As a result of the same, this bench passed the Order dated 07.05.2026. Essentially, the Order dated 07.05.2026 proposed to bring the legal position between the parties, inter se, to the same position as per record as of 07.05.2026, which, as it has turned out, was incomplete and also not up-to-date. Yet, the Order dated 07.05.2026 was also interim, with the final adjudication of the dispute left to be decided by the competent G&W Judge having subject-matter jurisdiction. Thus, the Order dated 07.05.2026, at no point in time, was meant to be a final one, when it expressly read:

> *". . .she may retain the custody <u>temporarily until the matter is decided and/or taken up, once again, by the Guardian and Wards Court</u>, on its own merit (underlining added)"*

10. The upshot of the above observation is/was that practically, the Order dated 07.05.2026 of handing over custody of the detainee baby, Eman-Erum to the mother, may have created a new situation apparently contrary to the three above-mentioned Orders dated 18.02.2026 passed by the previous G&W Judge, Johi and Amina (Amna's) own pleadings; yet, the anomalies and inconsistencies between the three Orders dated 18.02.2026, if any, were to be taken up by the G&W Court in Johi, which reference has not been filed with the G&W Judge till date by any of the parties impleaded herein.

11. While I can appreciate Counsel's arguments that the Order passed by me, as a Judge of the High Court, a higher forum, may appear to influence the G&W Judge, Johi, however, the Order itself mentions that handing over of the custody of Babt Eman-Erum is temporary. Based on reported case law, this (High) Court could not have decided the matter finally. Given the provisions of the G&W Act, 1890 and the family laws of Pakistan, which vest ultimate powers to the Family/G&W Courts to decide matters concerning custody, visitation, etc., the Order dated 05.07.2026, by no stretch of the imagination, can be read as final adjudication, which bound the lower forum. The G&W Court alone continues to have subject-matter jurisdiction to hear, decide and take appropriate action in the facts and circumstances of the case, as and when the aggrieved applicant-parent of the child approaches the G&W Court for relief. I also cannot conclusively adjudicate a matter concerning custody and visitation while exercising criminal review jurisdiction in this Cr. Misc. Appln. arising from an application pertaining to Section 491, Cr.P.C, which section itself has a most limited and narrow scope. As discussed hereinabove, the High Court could neither do so then (i.e. completely adjudicate the matter on 07.05.2026), nor, for the same reasons as set out hereinabove, can it do so now (while hearing a misc. application for review of an application decided under s.491 Cr.PC). Finally, there is no cause to modify an Order based on subsequent information/documents becoming available after 07.05.2026 when the Order itself states that it is temporary.

12. Given the above reasons, in the context of what was available before me on 07.05.2026, I am not inclined to modify my Order dated 07.05.2026. I am also hearing this matter instituted in the Circuit Court, Hyderabad, via video link in the Circuit Court in Larkana during the Summer Roster of the High Court of Sindh. No meaningful purpose will be served by creating yet another new situation by modifying an essentially temporary order, concerning custody/visitation, with yet another temporary order referring the parties to approach the G&W Court, when parties remain at liberty to approach the G&W Court at Johi to address their grievance in terms of the three Orders dated 18.02.2026 which passed all three Orders in the first place.

13. It is pertinent to mention here that in 2025, Amina (Amna), mother of the detainee, had moved all her applications before the G&W Judge, Johi, and the three Orders were passed by the same Judge in Johi. Thus, for all purposes, following the Order dated 05.07.2026, which is/was always temporary in nature, the aggrieved parties, as per the same Order, remain at liberty to approach the same G&W Court, Johi, seeking directions from the said Court in terms of all three Orders.

14. It is clarified that the observations made herein and in the Order dated 07.05.2026 are tentative and shall not be relied upon by the parties or by the G&W Court having competent jurisdiction as articulated herein and in the Order dated 07.05.2026. The G&W Judge in Juhi will adjudicate the dispute between the parties concerning the custody and visitation of Baby Eman-Erum and Baby Abid, as and when approached, on its own merits, in accordance with law.

15. Office is directed to return the main file as well as the R&P to the Circuit Court in Hyderabad and thereafter from Hyderabad for onward transfer to the concerned G&W Court, Johi, as the case may be.

16. The misc. (review) application stands disposed of in the above terms.

Judge