

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-982 of 2026

[Mst. Farah V. Province of Sindh & others]

Petitioner	Through Ms. Saira Ali, Advocate.
The State	Mr. Salahuddin Chandio, A.A.G
Respondent-7	Mr. Salman Nanji, Advocate.

Date of Hearing	19.10.2026
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Date of Decision	19.10.2026
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J U D G M E N T

Abdul Hamid Bhurgri, J.- Through this constitutional petition, the petitioner seeks recovery and custody of her minor daughter, baby Alisha, aged approximately four and a half years, alleging that respondent No.7, the father of the minor, unlawfully removed her from the petitioner's custody.

2. Briefly, the petitioner was married to respondent No.7, and the minor was born out of the wedlock on 03.04.2022. The parties were divorced on 12.02.2024. According to the petitioner, the minor had been residing with her until respondent No.7 allegedly removed her from her custody approximately two weeks before the institution of this petition. Upon notice, respondent No.7 produced the minor before this Court on 05.10.2026, whereupon her custody was provisionally entrusted to the petitioner/mother.

3. Respondent No.7 has contested the petition, asserting that pursuant to an agreement dated 23.07.2024, the minor had been residing with him. In support thereof, he has produced medical prescriptions and photographs and denied the allegation of forcible removal. He has also relied upon an unreported judgment of this Court in Jahan Ara v. Province of Sindh and others (C.P. No. S-2057 of 2017). Learned Assistant Advocate General, Sindh, on the other hand, has supported the petitioner's claim for provisional custody, submitting that the minor, being a female child of tender age, requires maternal care and attention in accordance with the principles of *hizanat*.

4. I have heard learned counsel for the parties and the learned Assistant Advocate General and examined the available record. The petition, particularly prayer clauses (a) and (b), seeks recovery, production and delivery of custody of the minor and is referable to Article 199(1)(b)(i) of the Constitution. Although custody and guardianship ordinarily fall within the jurisdiction of the competent Guardian Court, extraordinary jurisdiction may be invoked in exceptional circumstances requiring immediate protection of a minor. Such jurisdiction is confined to provisional relief and cannot substitute the final adjudication of custodial rights. In the peculiar circumstances of the present case, particularly the tender age of the minor and the need to safeguard her immediate welfare, the Court considers it appropriate to examine the question of provisional custody without undertaking a final adjudication of the disputed claims of the parents. The Honourable Supreme Court, in **Nisar Muhammad v. Sultan Zari**¹, **Mst. Khalida Parveen v. Muhammad Sultan Mehmood**² and **Mst. Nadia Parveen v. Mst. Almas Noreen**³, has considered the distinction between unlawful and improper custody and the circumstances warranting provisional intervention, with the welfare of the minor remaining the paramount consideration.

5. In the present case, the minor is a female child aged approximately four years and six months. At this tender age, her need for maternal care, affection and attention assumes particular significance. Under the principles of *hizanat*, the mother ordinarily enjoys a preferential claim to the custody of her minor daughter, subject always to the overriding consideration of the child's welfare. No material has presently been established which *prima facie* renders the petitioner/mother unsuitable to provide such care. Having regard to these circumstances, I am of the tentative view that the minor's immediate welfare would be better served in her mother's custody.

6. The agreement dated 23.07.2024 and other documents relied upon by respondent No.7 do not call for determination in these proceedings. Even assuming that the agreement was executed and acted upon, it cannot, by itself, override the paramount consideration

¹ Nisar Muhammad and another v. Sultan Zari, PLD 1997 SC 852

² Mst. Khalida Parveen V. Muhammad Sultan Mehmood & another, PLD 2004 SC 1

³ Mst. Nadia Parveen v. Mst. Almas Noreen and others, PLD 2012 SC 758

of the minor's welfare. Reference may also be made to **Mst. Rabiya Ilyas v. Additional Sessions Judge and others.**⁴ Likewise, the disputed assertions concerning the minor's previous custody and alleged forcible removal cannot appropriately be resolved in these summary proceedings. No conclusive finding is, therefore, recorded on these questions or regarding the fitness of either parent. The judgment relied upon by respondent No.7 does not alter the necessity of assessing the immediate welfare of the minor in the particular circumstances of this case.

7. In view of the foregoing, and considering the tender age and immediate welfare of the minor, the petition is disposed of by directing that custody of baby Alisha shall remain with the petitioner/mother as a purely provisional arrangement, subject to any order passed by the competent Guardian Court. Respondent No.7/father shall be entitled to reasonable and meaningful visitation, which the petitioner shall facilitate without unnecessary obstruction. In case of disagreement regarding visitation, either party may seek appropriate directions from the competent Guardian Court.

8. Either party shall be at liberty to institute appropriate proceedings before the competent Guardian Court, which shall decide all questions concerning custody, guardianship and visitation independently, strictly in accordance with law, keeping the welfare of the minor as the paramount consideration. Neither the observations made herein nor the provisional custody arrangement shall prejudice the rights and contentions of either party or influence the Guardian Court, which shall remain free to pass appropriate interim or final orders on the basis of the material and evidence brought before it.

The petition stands disposed of in the above terms, along with pending application(s), if any.

JUDGE

SAJID

⁴ Mst. Rabiya Ilyas v. Additional Sessions Judge and others, PLD 2019 Lahore 281