

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-306 of 2026

Petitioner : Siddiq Ullah son of Zulfiqar Khan,
through Mr. Muhammad Zahir,
Advocate

Respondents : Not present.

Date of Hearing : 07.04.2026

Date of Reasons : 14.04.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Two orders passed by the learned VIth Additional District & Sessions Judge, Karachi (Central) have been assailed in this petition. The first is the Order dated 29.12.2025 passed in Habeas Corpus Petition No. 445 of 2025, whereby the petition was dismissed after recording the statement of the *detenue* Mst. Shabina Bibi, who appeared in person before the Court and voluntarily stated that she was residing with her father out of her own free will, and did not wish to accompany the applicant. The second is the Order dated 24.02.2026 passed in Habeas Corpus Petition No. 57 of 2026, whereby the second petition filed on behalf of the petitioner with respect to the same *detenue* was dismissed as not maintainable on the ground that the earlier petition had already been decided on merits, after recording of statement of the *detenue* and no substantial change in circumstances had been shown to justify a fresh petition on the same cause of action.

2. Mst. Shabina Bibi, daughter of Respondent No.4 Sherbaz Khan, was married to the petitioner Siddiqullah on 04.08.2018, who is being represented through his brother/ attorney. Siddiqullah proceeded to Bahrain after the marriage and has been residing abroad since then. The *detenue* has been residing with her father since around the last two years. She has a daughter named Aleema who is in the custody of the petitioner side. She had filed an application before a competent court for

recovery of her daughter, which was dismissed. She has also filed a suit for recovery of dowry articles, a suit for maintenance, and a Guardian and Ward case before the competent forums.

3. It appears from the record that earlier, in Habeas Corpus Petition No. 445 of 2025 filed before the learned VIth Additional District & Sessions Judge, Karachi (Central), the detinue Mst. Shabina Bibi was summoned, appeared in person before the court, and on solemn affirmation recorded a statement to the effect that she was residing with her father of her own free will, that the petition had been filed merely to harass her and her family in order to retain custody of the minor, and that she did not wish to go with the applicant. The learned court, after recording her statement and satisfying itself as to her wish, dismissed the petition on merits by order dated 29.12.2025.

4. Thereafter, a second Habeas Corpus Petition No. 57 of 2026 was filed on behalf of the same petitioner seeking identical relief, on the stated ground that the father of the detinue had temporarily gone to Khyber Pakhtunkhwa and therefore the detinue was no longer under his influence and would now be willing to appear before the court independently. The learned Sessions Court dismissed this second petition by order dated 24.02.2026, holding that the petition was not maintainable as no substantial change in circumstances had been demonstrated, the earlier petition having been decided on merits after full production and statement of the alleged detinue.

5. Heard and perused.

6. The fundamental question is whether the two impugned orders suffer from any jurisdictional error or manifest illegality that would warrant interference by this Court in its constitutional jurisdiction. So far as the order dated 29.12.2025 passed in Habeas Corpus Petition No. 445 of 2025 is concerned, the record shows that the alleged *detinue* Mst. Shabina Bibi appeared in person before the learned Sessions Court, her statement was recorded on solemn affirmation, and she clearly and categorically expressed her desire to continue residing with her father and refused to accompany the applicant. The learned Sessions Court satisfied itself as to the free will and volition of the *detinue* and dismissed the petition on merits. The primary contention of the petitioner is that this statement was not voluntary and was given under pressure from her father who was allegedly present and threatening her in Pashto. However, this is a bare assertion that finds no support from the record. The statement of the *detinue* as recorded by the court does not reflect any

hesitation, duress, or coercion. No objection was raised before the learned court at the time of recording of the statement that the father was present and was exerting pressure. No application was made to the court to exclude Respondent No.4 from the courtroom during the recording of the statement. The detinue is described as being 22 years of age and is thus a major and sui juris lady who was fully capable of expressing herself and of alerting the court if she was being pressured. The court is a place of law and solemnity where a witness takes an oath before recording a statement. To say that the court failed to appreciate that coercion was being exerted and that the entire statement was involuntary without placing any material before the court at the relevant time, or before this Court now, amounts to nothing more than conjecture and afterthought. The so-called voice messages and telephonic communications said to have been made by the *detinue* subsequently have not been placed before this Court in any verifiable form. Allegations of coercion cannot be accepted on the basis of unverified private recordings that were never produced before the court below, despite being referred to in the petition. The assertion that the *detinue* loudly protested after coming out of the chamber is also not borne out by any material on record and has no evidentiary value.

7. The learned court below was therefore fully justified in dismissing Habeas Corpus Petition No. 445 of 2025 on merits after recording the free and voluntary statement of the *detinue*. The impugned order dated 29.12.2025 does not suffer from any jurisdictional defect, perversity, or illegality that would call for interference under Article 199 of the Constitution.

8. So far as the order dated 24.02.2026 passed in Habeas Corpus Petition No. 57 of 2026 is concerned, the question is whether the second petition was maintainable at all. The law is settled on this point. Jurisdiction under Section 491 Cr.P.C. is extraordinary and summary in nature and is confined to examining the legality of the detention of an alleged detinue. Once a petition under Section 491 Cr.P.C. has been decided on merits after the detinue has been produced before the court and her statement has been recorded, a second petition on the same cause of action is not maintainable unless a material and substantial change in circumstances is demonstrated through credible material on record. This principle is well established and the case laws cited by the learned counsel for the petitioner do not detract from it. The cases reported as, 1986 PCr.LJ 1111 (Lahore), 2000 YLR 261 (SC), 2021 YLR 869, 2011 MLD 337 (Lahore), and PLD 2021 (Lahore) 77 lay down the general principles governing habeas corpus proceedings, including the right of a person to liberty and the duty of the court to satisfy itself as to freewill of

the *detenue*. These principles have already been followed by the learned Sessions Court in the earlier proceeding. In all those cases, the courts intervened where there was a genuine dispute as to whether the person was in illegal confinement or where the earlier proceeding had not been conducted in accordance with law. In the present case, the *detenue* had freely appeared before the court, given her statement on oath, and expressed her clear and unequivocal wish to reside with her father. The previous proceedings cannot be said to have been conducted in violation of any settled principle.

9. The only ground taken in the second petition was that the father of the *detenue* had temporarily gone to Khyber Pakhtunkhwa and the *detenue* was therefore no longer under his influence. The learned counsel has now argued that this was misread by the Sessions Court and that the real ground was the willingness of the *detenue* to give a fresh statement independently. However, this explanation does not hold. Even if the ground is understood as the willingness of the *detenue* to record a fresh statement, the question remains as to what credible material was placed before the learned court to show that the earlier statement was involuntary and that the *detenue* now wishes to give a different statement. No such material was produced. The temporary absence of the father from Karachi, by itself, is not a material change in circumstances sufficient to justify filing a fresh habeas corpus petition on the same cause of action. The learned Sessions Court correctly appreciated this position and dismissed the second petition as not maintainable, which view does not call for any interference.

10. There is another important aspect that goes to the root of this petition. The present petition has been filed not by the husband of the alleged *detenue*, but by his brother Muhammad Siddique acting as attorney. The husband Siddiqullah is residing in Bahrain and has purportedly executed a power of attorney in favour of his brother. Even accepting for the sake of argument that the power of attorney is valid and that the attorney can file a petition on behalf of the husband, it must be noted that the relief ultimately sought is that the *detenue* be set at liberty and be allowed to join her husband. The *detenue* is an adult, *sui juris*, and a major woman. She has already expressed before the court below, on oath, that she does not wish to accompany the applicant. Under the personal law applicable to the parties, the brother of the husband falls within the prohibited degrees of relationship with the *detenue* and has no independent custodial right over her. A court exercising jurisdiction under Section 491 Cr.P.C. cannot recognise or confer any custodial entitlement in favour of such a person. The question of the lawfulness of the habeas

corpus proceedings, therefore, also becomes doubtful when the ultimate purpose sought to be achieved is handing over an adult woman to someone who has no legal right to her custody or residence.

11. It is further significant that the *detenue* herself has filed a suit for maintenance against her husband, a suit for recovery of dowry articles, and a Guardian and Ward case for custody of the minor daughter before competent forums. These facts, as noticed by the learned Sessions Court, clearly indicate that the matter between the parties is essentially matrimonial and domestic in nature and that the appropriate forums are already seized of the relevant disputes. The petitioner cannot seek to bypass those forums and use habeas corpus jurisdiction as a tool to compel an adult woman to leave the house of her parents and join her husband or his brother.

12. The constitutional jurisdiction of this Court under Article 199 is supervisory in nature. It does not sit as a court of appeal over every order of the court below. It intervenes only where there is a jurisdictional error, a violation of fundamental rights, or a manifest illegality resulting in failure of justice. In the present case, the learned Sessions Court correctly followed the settled principles governing habeas corpus petitions. The *detenue* was produced before the court in the earlier proceeding; her statement was recorded, the court satisfied itself as to her free will, and the petition was dismissed. The second petition was correctly dismissed as not maintainable in the absence of any material change in circumstances. Both the impugned orders are legal, proper, and in accordance with law. No case for interference under Article 199 of the Constitution has been made out.

13. The instant petition was dismissed by my short order dated 07.04.2026, and these are the reasons for the same.

JUDGE