

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc.Appln. No. S-230 of 2025

Applicant : Mst. Sadoran w/o Muhammad Ismail Mahesar
Through Mr. Abdul Sattar Mahesar, Advocate

Respondent No.06 : SHO of Police Station Pir-Jo-Goth, Khairpur
Through Mr.Saeed Ahmed, Janweri, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 27.08.2025

Date of order : 03.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J—This application under Section 491 Cr.P.C has been pending before this Court since April 15, 2025, with multiple hearings conducted, extensive inquiries ordered, and various police officials appearing and filing reports. The matter requires careful consideration in light of established legal principles governing habeas corpus proceedings.

2. The applicant, Mst. Sadoran, claims her son Zaman son of Muhammad Ismail was allegedly kidnapped by private respondents Ayaz Hussain Mahesar and his son Masood from the court premises on April 14, 2025, after his bail application was dismissed. The alleged incident occurred when they were leaving the court premises around 9:15 am. The learned counsel for the applicant was directed to satisfy this Court regarding the maintainability of the present application in view of concurrent remedy available before the Sessions Judge.

3. Section 491 Cr.P.C empowers High Courts to issue directions of the nature of habeas corpus for persons illegally or improperly detained. However, this jurisdiction is extraordinary and must be exercised with great caution. The legal position has evolved significantly since Ordinance VIII of 2002, which introduced sub-section (1A) to Section 491 Cr.P.C., allowing Sessions Judges concurrent jurisdiction. This raises the question of forum shopping and alternative remedies available to the petitioner.

4. In *Province of Sindh v. Raeesa Farooq* (1994 SCMR 1283) and subsequent cases, the Supreme Court established that habeas corpus petitions are maintainable only when there is a clear case of illegal detention, at least a strong and credible suspicion of unlawful confinement exists, the detaining authority can be identified, and regular criminal remedies are inadequate.

5. The comprehensive framework established in *Ali Gohar and Jamaluddin v. SSP Kamber* (C.P. No. D-405 of 2012) provides that when a Court finds illegal detention, it may issue rule nisi for production of the detainee, set the detainee free, convert proceedings into bail application, order registration of case against police officers or private persons violating fundamental rights, direct departmental proceedings against responsible police officers, order contempt proceedings against persons violating court directions, award costs against police officers, award monetary compensation to the detainee, or dismiss the petition where detention is found lawful and bona fide.

6. Despite multiple court orders since April 2025 and extensive inquiries by DSP Asadullah Phulpoto and his predecessor PDSP Faraz Ali Maitlo, no trace of the alleged detenu has been found. The inquiry reveals he is an absconder in multiple FIRs. The alleged detainee is not in custody but is an absconder evading legal process, and his bail application was already dismissed on April 14, 2025. The inquiry conducted by multiple DSPs found no credible evidence of kidnapping or illegal detention by private respondents. The investigation revealed that private respondent Masood was at Shah Abdul Latif University on the date of alleged incident with attendance record filed, contradictory statements were filed by applicant's counsel on different dates, and no witnesses to the alleged kidnapping despite occurrence at court premises. The police officers have conducted thorough inquiries as ordered with no misconduct established. Police officials have complied with court directions and filed regular reports, warranting no costs against police officers.

7. The case suffers from fundamental contradictions where the application dated 15.04.2025 alleges kidnapping by identified private respondents while the statement dated 19.04.2025 before Judicial Magistrate claims taken by unknown persons. These contradictions raise serious questions about the bona fides of the application. The inquiry has conclusively established that the alleged detenu is involved in FIR No.86/2024 registered by complainant Ayaz Hussain Mahesar who is the private respondent, Crime No.15/2023 as another pending case, with absconder status confirmed by multiple police reports, and bail dismissed on the very date of alleged kidnapping. This Court

appreciates the comprehensive inquiry conducted by DSP Asadullah Phulpoto SDPO City Khairpur, PDSP Faraz Ali Maitlo before transfer, SSP Khairpur who made personal appearance, and multiple SHOs and police officials. All inquiries consistently found no evidence of illegal detention.

8. The Ali Gohar judgment involved clear evidence of 4 days illegal detention, medical report showing torture marks, raid commissioner's report confirming detention, no entry in police record of arrest, and victim was a student appearing for examinations. The present case lacks all these elements. In *Mazharuddin v. The State* (1998 P.Cr.L.J 1035), the Division Bench established the compensation framework but only where unlawful detention is proven, emphasizing that monetary compensation is awarded only when fundamental rights are violated through illegal confinement. The Supreme Court in multiple judgments has drawn a clear distinction between missing person cases involving regular criminal investigation, police inquiry under Cr.P.C., Commission on Enforced Disappearances, and not being habeas corpus matter, versus illegal detention cases involving identifiable detaining authority, specific place of confinement, where habeas corpus is appropriate.

9. While acknowledging the applicant's genuine concern for missing son, prompt legal action on April 15, 2025, and cooperation with court-ordered inquiries, there remain concerning elements including contradictory statements undermining credibility, failure to provide concrete evidence despite court directions, and non-cooperation in providing Family Registration Certificates as ordered.

10. After exhaustive examination of the entire record spanning 4 months of proceedings, this Court reaches definitive conclusions. The burden of proof in habeas corpus proceedings requires the petitioner to show at least a prima facie case of illegal detention. Despite extensive opportunities and court assistance, no such case has been made out. The alleged detenu is not a victim but an accused evading legal process in multiple criminal cases, which fundamentally alters the nature of the case.

11. If the applicant genuinely believes her son has been kidnapped, the appropriate remedy is registration of FIR for kidnapping, regular criminal investigation, and approach to Sessions Court under Section 491(1A) Cr.P.C. The High Court's extraordinary jurisdiction under Section 491 Cr.P.C. should not be converted into a general missing person locator service, as this would trivialize the fundamental right to liberty and burden the constitutional courts unnecessarily.

12. This application under Section 491 Cr.P.C. is not maintainable as no illegal detention has been established despite exhaustive inquiry, the alleged detainee is an absconder in criminal cases, alternative remedy is available under regular criminal law, and contradictory pleadings undermine credibility. Even if maintainability is overlooked, the application fails on merits as no credible evidence of kidnapping or detention exists, comprehensive police inquiry found no substance in allegations, and documentary evidence contradicts applicant's version.

13. While dismissing this application, this Court, in the interest of justice and following the humanitarian approach demonstrated in Ali Gohar case, directs that SSP Khairpur shall ensure that if accused Zaman surrenders or is apprehended, he shall be produced before the competent Magistrate within 24 hours, proper investigation of pending criminal cases shall continue, and any information regarding the whereabouts of the accused shall be pursued through regular criminal procedure.

14. If genuine information about illegal detention emerges with credible evidence, fresh application may be filed by the applicant, alternative legal remedies under regular criminal law remain available, and cooperation with ongoing criminal investigations is expected. Copy of this order shall be forwarded to Inspector General of Police, Sindh for information and appropriate action, SSP Sukkur and SSP Khairpur shall ensure coordination in inter-district criminal matters, and Sessions Judge, Khairpur shall be informed about the disposal of this case.

15. Following the Ali Gohar precedent regarding costs and compensation, the police authorities have discharged their duties satisfactorily by conducting thorough inquiries as directed, therefore no costs are imposed. Unlike Ali Gohar case where Rs. 40,000 compensation was awarded for proven illegal detention, no compensation is warranted here as no illegal detention has been established. Each party shall bear their own costs of litigation. This case highlights the delicate balance between protecting fundamental rights through habeas corpus and preventing misuse of extraordinary constitutional jurisdiction. While the Court must remain vigilant to protect citizens from illegal detention, it must equally ensure that frivolous or fabricated applications do not clog the judicial system. The comprehensive framework established in Ali Gohar case provides excellent guidance for such matters, however each case must be decided on its own facts and circumstances. This Court appreciates the genuine concern of a mother for her missing son but cannot ignore the legal

requirements for maintaining a habeas corpus petition. The rule of law demands that even in emotionally charged cases, decisions must be based on evidence and established legal principles. The dismissal of this application is without prejudice to the applicant's right to file a fresh application if credible evidence of illegal detention emerges in the future.

16. For the foregoing reasons, this application stands dismissed with no further orders required along with listed application(s).

J U D G E