

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1118 of 2025

Petitioner : Talha Sher Chishti, in person.
Respondent No.1 : SHO, P.S Aziz Bhatti, Nemo.
Respondent No.2 : Mr. Arif Hussain, Nemo.
Date of Hearing : 05.11.2025
Date of Order : 05.11.2025

—

ORDER

TASNEEM SULTANA, J: The petitioner appears in person and seeks the constitutional jurisdiction of this Court under Article 199 of the Constitution through a petition styled as habeas corpus, alleging that respondent No.2 removed his minor daughter from his residence during his absence and is retaining her in improper and illegal custody.

2. The petitioner states that his marriage was solemnized in 2019 and from the wedlock a daughter, Fatima Talha, was born on 03.12.2020. He narrates that due to domestic discord his wife left the matrimonial home, and on 15.07.2024, when he had left for his office, respondent No.2 came to his house. Upon his return he found that his wife had departed along with the minor child. He claims that the removal occurred without his knowledge or consent. He further states that attempts at reconciliation failed and that proceedings for Khula and under the Guardian and Wards Act were thereafter instituted but stood dismissed for non-prosecution.

3. The petitioner, appearing in person, submits that he is the natural father of the minor and that respondent No.2 did not possess lawful authority to remove or retain the child. He characterizes the departure as abrupt, unauthorized, and contrary to his parental rights. On this basis he seeks issuance of a writ directing recovery and production of the minor.

4. The matter has been examined with due care in the light of the petitioner's own assertions. His narration reflects that the departure of the minor from his residence took place in the context of domestic discord and strained relations between the spouses. The events, as

described, stem from interpersonal circumstances within the family and not from any independent or coercive act on the part of respondent No.2 that would, on its face, amount to unlawful confinement.

5. The petitioner acknowledges that at the time of leaving the house, the minor was accompanied by her own mother. Custody of a minor with the mother even where the matrimonial relationship is broken cannot, without more, be termed illegal or unauthorized in the strict sense contemplated under habeas corpus jurisdiction. The presence of respondent No.2 at the time of departure does not, by itself, convert the situation into one of illegal detention unless a clear and distinct act of unlawful restraint is demonstrated. No such act emerges from the petitioner's own version.

6. Whether the departure was justified, unjustified, consensual or otherwise, and what circumstances prompted it, are matters that cannot be adjudicated without a factual probe. Constitutional jurisdiction in the nature of habeas corpus does not permit the Court to embark upon an examination of disputed domestic facts or to determine questions arising out of a strained family relationship. Such issues lie beyond the narrow scope of summary proceedings and are properly to be resolved before the forums competent to undertake fact-finding and evidence-based adjudication.

7. The jurisdiction under Article 199 is supervisory and exceptional. A writ of habeas corpus may be granted only where the custody complained of is patently without lawful authority on the face of the record. It is not a mechanism for resolution of matrimonial discord, nor for determining contested allegations which require inquiry, evidence, and evaluation of circumstances. Where the matter originates from fractured domestic relations and raises factual issues unsuitable for summary determination, it falls outside the limited domain of habeas corpus jurisdiction.

8. In the present case, even accepting the petitioner's assertions at their highest, no element of unlawful confinement is made out. The essential prerequisite for invoking habeas corpus that the minor is being detained without lawful authority is not satisfied on the petitioner's own showing.

9. For the foregoing reasons, the petition is devoid of legal foundation under Article 199 and is, accordingly, dismissed in limine.

JUDGE

Ayaz Gul