

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Misc. Application No.S-195 of 2026
[Mst. Rehana vs. SSP Matiari and Others]

Applicant by: Mr. Shafqat Hussain Chandio
Private respondents by: Mr. Nouman Gul Bozdar advocate
State by: Mr. Altaf Hussain Khokhar D.P.G
Date of hearing 15.06.2026
Date of Order 15.06.2026

ORDER

TASNEEM SULTANA, J: Through the instant Criminal Miscellaneous Application under Section 491 Cr.P.C., the applicant, Mst. Rehana, seeks recovery and custody of her minor son namely Zeeshan son of Irfan Ali Brohi, aged about sixteen months, allegedly kept in improper custody of private respondent No.3/father and other private respondents.

2. Briefly, the facts set out in the application are that the applicant was married to respondent No.3, Irfan Ali Brohi, in the year 2022 and out of such wedlock minor Zeeshan was born. It has been alleged that after marriage, respondent No.3 maltreated the applicant and did not allow her to meet her family members. It is further alleged that on 27.01.2026, respondent No.3 came to the house of the applicant's parents, issued threats and took away the minor Zeeshan. The applicant claims that despite repeated requests and efforts made through respectable persons, the minor was not returned to her. It is further stated that the minor, being of tender age, requires the care and affection of his mother.

3. The record reflects that after filing of the present application, notices were issued and the official respondents were directed from time to time to make efforts for recovery and production of the minor/detenué. Compliance reports were also submitted by the police. On 14.05.2026, the applicant appeared before this Court and, on the request made on her behalf, the police were directed to record her statement and take further action in accordance with law. Thereafter, the applicant appeared at Police Station Shahpur on 24.05.2026, where her statement was recorded and, on the basis thereof, F.I.R. No.43 of 2026 was registered under Sections 364-A, 109 and 34 P.P.C. against private respondent No.3/father and others. Today, the minor/detenué Zeeshan son of Irfan Ali Brohi, aged about sixteen months, has been produced before this Court by the police.

4. Learned counsel for the applicant contends that the applicant is the real mother of the minor, who is only about sixteen months of age and is fully

dependent upon motherly care. He further contended that the minor is of tender age, and his welfare requires that he should remain in the care and custody of the applicant/mother. He submits that the custody of the minor may be handed over to the applicant.

5. Learned counsel for respondent No.3/father did not seriously object to passing of an appropriate order keeping in view the welfare of the minor. He, however, submitted that F.I.R. No.43 of 2026 has been registered against the private respondents, though the minor was never abducted or forcibly removed from the custody of the applicant. According to him, the minor was in lawful custody of his father, and it was the applicant herself who left the minor with him. He submits that private respondent No.3, being father of the minor, has not acted illegally.

6. Learned Assistant Prosecutor General, Sindh, submits that the proceedings under Section 491 Cr.P.C. are summary in nature and the question of permanent custody is to be decided by the Guardian Court.

7. Heard. Record perused.

8. The scope of proceedings under Section 491 Cr.P.C. is limited to the question of recovery/production of a person alleged to be illegally or improperly detained. In matters relating to minors, such jurisdiction is summary and extraordinary in nature and is not meant to finally determine the competing rights of parties regarding guardianship or permanent custody. Such questions are ordinarily to be decided by the competent Guardian Court. However, while making an interim arrangement, the Court is required to keep the welfare of the minor as the paramount consideration. In this regard, guidance may be taken from the case of *Mst. Nadia Perveen v. Mst. Almas Noreen and others* (PLD 2012 SC 785), wherein the Honourable Supreme Court has held that jurisdiction of the High Court under Section 491 Cr.P.C. for recovery of minors is to be exercised sparingly and only in exceptional and extraordinary cases of real urgency, keeping in view that even a Guardian Judge has the requisite powers of recovery of minors and regulating their interim custody.

9. In the present case, the minor Zeeshan is about sixteen months old and has been produced before this Court today by the police. At such tender age, the minor requires constant care, attention and affection of the mother. The stand of private respondent No.3 is that the minor was in his lawful custody and that the applicant herself left the minor with him; however, this Court, in the present summary proceedings, is not required to finally determine the disputed factual controversy as to how the minor came into the custody of the father. For the limited purpose of these proceedings, keeping in view the tender age of the minor

and his immediate welfare, his custody is handed over to the applicant/mother in Court.

10. So far as F.I.R. No.43 of 2026 is concerned, this Court is conscious that the present proceedings are under Section 491 Cr.P.C. and are confined to production and interim custody of the minor. The record reflects that the minor has been produced from the custody of his father/ respondent No.3, who claims that the minor was in his lawful custody and that he had neither abducted nor forcibly removed him from the applicant. Since the father is a natural guardian and the controversy essentially relates to custody of a minor between the parents, the Investigating Officer of F.I.R. No.43 of 2026, Police Station Shahpur, shall examine the matter strictly in accordance with law and place an appropriate report before the competent Court. It is clarified that this Court has not expressed any final opinion on the criminal liability of either party. The interim custody of the minor shall remain with the applicant/mother, subject to regulation by the competent Guardian Court. respondent No.3/father shall be at liberty to approach the competent Guardian Court for custody/visitation rights.

11. The official respondents shall ensure that no harassment is caused to either side except in accordance with law. The observations made hereinabove are tentative in nature and confined only to the present proceedings under Section 491 Cr.P.C.

12. The instant Criminal Miscellaneous Application stands disposed of in the above terms.

JUDGE