

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Constitutional Petition No. S-92 of 2025.
(Mst. Shehnaz vs Learned Family Judge Sukkur and others).***

***Before:-
Mr. Justice Ali Haider 'Ada'.***

04.05.2026.

Mr. Wajid Ali Shaikh, Advocate for the Petitioner.
Petitioner and Minor namely Muhammad Raheel is present.
Respondent No.3 namely Raja Channa is Present.
Mr. Agha Athar Hussain Pathan, Assistant Advocate General.

ORDER

Ali Haider 'Ada' J:- The constitutional petition assails the concurrent orders passed by the learned courts below whereby permanent custody of the minor child was handed over to respondent No.3/father.

2. Briefly stated, respondent No.3 instituted an application under Section 25 of the Guardian and Wards Act, 1890 seeking permanent custody of the minor namely Muhammad Raheel. At the relevant time, the age of the minor was determined to be about seven years. The learned Family Judge/Consumer Protection Court, Sukkur, vide order dated 03.08.2024, allowed the said application and handed over custody of the minor to respondent No.3/father, however, certain visitation rights were granted to the petitioner/mother regarding meetings with the minor.

3. The petitioner/mother challenged the said order before the appellate court, however, the learned Additional District Judge-III, Sukkur, through impugned judgment, maintained the findings recorded by the trial court and dismissed the appeal, hence the instant constitutional petition.

4. Learned counsel for the petitioner submitted that the minor is deeply attached to the petitioner/mother and presently the minor is

about 10/11 years of age and sufficiently mature to understand his welfare and surroundings. According to the learned counsel, respondent No.3 has failed to properly maintain and look after the minor, therefore, the welfare and better interest of the child lies with the petitioner/mother instead of respondent No.3/father, but such material aspect has been ignored by the courts below. Learned counsel further contended that earlier the petitioner had instituted Family Suit No.329 of 2018 for dissolution of marriage, recovery of dower and dowry articles as well as maintenance for herself and the minor, wherein maintenance to the extent of Rs.2,500/- per month was awarded in favour of the minor.

5. On the other hand, learned counsel for respondent No.3 was called absent today, however, respondent No.3 is present in person and submits that he is serving as a bank employee and is fully capable of maintaining and providing proper education to the minor. He further submits that the maintenance amount could not be regularly paid due to non-availability of meetings with the child and that both the courts below have rightly exercised jurisdiction while passing the impugned orders.

6. Learned Assistant Advocate General submits that in the present circumstances, the wishes and inclination of the minor cannot altogether be ignored, particularly when the minor, who is also in attendance before this Court, has expressed his willingness to live with the petitioner/mother. He further submits that with the passage of time the minor will naturally develop independent understanding and preferences regarding his future life and welfare. The learned law officer proposed that a balanced arrangement be evolved so as to amicably resolve the controversy while safeguarding the welfare of the minor.

7. Heard learned counsel and perused the material available on record.

8. First of all, during the course of arguments, it was candidly admitted by respondent No.3 that he is employed as a bank employee and remains fully occupied in the discharge of his official duties. It has further come on record that respondent No.3 is residing at Shikarpur instead of the station where the minor ordinarily resides with the petitioner/mother. Moreover, this Court cannot lose sight of the prevailing law and order situation in the Katcha areas adjoining Shikarpur, where police operations against hardened criminals are presently underway. Due to such circumstances, movement in the area particularly during evening hours remains restricted and even ordinary citizens generally prefer to return to their homes before sunset owing to security concerns.

9. Keeping in view the aforesaid aspect, it is also one of the essential considerations relating to the welfare and convenience of the minor that, if the custody of the child remains with respondent No.3 at Shikarpur, then frequent movement of the minor for purposes of meetings and visitation with the petitioner/mother may not only become difficult and inconvenient but may also expose the child to unnecessary hardship and insecurity. Therefore, while determining the issue of custody, the Court is required to consider not only the financial capacity of a parent but also the surrounding circumstances, including the safety, accessibility, emotional comfort and overall welfare of the minor, which are of paramount consideration under the law.

10. After careful consideration of the minor's age, educational continuity, psychological well-being, emotional and medical needs, and the stability of the home environment, as well as the city of residence and the current capacities of the parents, it has been concluded that the best interests of the child, particularly in the case of a child with special needs, are best served by remaining in the custody of the mother. No alternative carer can fully replicate the natural care, emotional consistency, and protective environment that a mother is uniquely positioned to provide.

11. Furthermore, the child must be heard in all proceedings affecting him, so that his best interests can be properly understood and protected. Participation of a child in legal proceedings is not a mere formality but a fundamental principle of a justice system that respects the dignity and agency of the child. Listening to the child instills a sense of worth, inclusion, and trust in the judicial process. While the child's views must be seriously considered to ensure that decisions are informed by an understanding of the child's perspective, ultimately enabling the court to act in the child's best interests. These principles are supported by the decision in *Dr. Muhammad Asif v. Dr. Sana Sattar*, 2026 PLD Supreme Court 238.

12. A father bears a solemn and continuous obligation to provide maintenance for his offspring, a duty grounded not merely in his financial capacity but in the principle of *nasab* (lineage). This obligation persists until the son attains the age of puberty and, in the case of a daughter, until her marriage. In certain instances, fathers, upon dissolution of marriage or after losing custody, become hesitant to discharge their maintenance obligation, erroneously treating it as contingent upon matrimonial cohabitation or custodial rights. Such a perception is both legally flawed and ethically untenable under Islamic values. This principle has been affirmed in *Muhammad Imran Baqir v. Mst. Zarnain Arzoo*, 2026 PLD Supreme Court 170.

13. During the course of the confrontation, it was observed that the petitioner, the minor and respondent No.3, all being present, agreed that a comprehensive parameter plan, if prepared with their mutual consent, should be duly implemented. Keeping in view this consensus and after considering all relevant aspects concerning the welfare, safety, and overall well-being of the minor, a comprehensive custody and visitation plan is formulated as follows:

(i). Custody of the Minor: The minor shall remain in the custody of the petitioner/mother until the minor attains the age of majority,

after which the minor shall have full liberty to decide their residence and guardianship in accordance with law.

(ii). Monthly Visitation: Respondent No.3/father shall be entitled to meet the minor twice every month, specifically: On the second Sunday of the month; and On the last Sunday of the month. The meetings shall take place in City Sukkur between 2:00 PM and 6:00 PM. During such visits, the minor shall remain under the care of respondent No.3 for the entire duration of the meeting.

(iii). Summer Vacation: During the summer vacation, which commences on 1st June and concludes on 31st July, the minor shall reside with respondent No.3 for a period of 15 days. The period shall begin on 1st June and end on 15th June.

(iv). Winter Vacation: During the winter vacation, the minor shall reside with respondent No.3 for a period of one week from the commencement of the vacation.

(v). Eid Celebrations: During Eid, (Eid-ul-Fitr as well as Eid-ul-Adha) the minor shall celebrate the second day of Eid with respondent No.3 at the residence of Respondent No.3

(vi). Restriction on Relocation: Respondent No.3 shall not remove the minor to any location other than the place of residence specified above during summer vacation, winter vacation, Eid celebrations, or monthly visits. During monthly visits, the minor shall not be removed from City Sukkur.

(vii). Maintenance: The maintenance amount, as previously determined by the Family Judge, Sukkur, in Family Suit No.329 of 2018, was fixed to continue as per law. The previous maintenance dues shall continue to be paid in accordance with the terms set by the Family Judge in the said family suit.

(viii). Compliance: All parties are directed to strictly adhere to the provisions of this plan. Non-compliance shall be subject to legal consequences as per law.

14. It is a matter of profound concern that minor children are often deprived of meaningful contact with their parents, which is essential for their emotional, psychological, and social development. The comprehensive parameters and structured visitation plan formulated herein are not mere formalities; they are necessitated by the current law and order situation and prevailing societal realities. The Court is mindful that ensuring the safety, stability, and balanced upbringing of the minor is of paramount importance, particularly in circumstances where movement and interaction may be otherwise restricted due to security concerns or other external factors.

15. The welfare of the child is essentially linked to the welfare of society at large. Children are the foundation upon which the future of the nation rests, and their holistic development, emotional, educational, and moral is critical to building a responsible, and just society. It is, therefore, the responsibility of the Court to ensure that judicial orders in matters of custody and visitation not only respect legal principles but also serve the larger societal objective of promotion responsible citizens.

16. In view of the foregoing, the instant petition is hereby disposed of in accordance with the observations made and the comprehensive custody and visitation plan outlined above. Compliance with the terms of this order shall be strictly monitored, and any deviation shall attract appropriate legal consequences under the law.

JUDGE