THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. S-365 of 2026

[Riyaz Ahmed Khoso Vs. Province of Sindh & others]

Petitioner	**:**	Through Mr. Muhammad Ibrahim Lashari, Advocate
Official Respondents	**:**	Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh Mr. Saeed Akbar Siyal, Assistant Advocate General, Sindh SIP Asif Ali Tunio, SHO, Civil Line, Jacobabad & DSP Sarfraz Ahmed Magsi, SDPO, City Jacobabad
Private Respondents	**:**	Nemo
Date of Hearing	**:**	**16-11-2026**
Date of Order	**:**	**16-11-2026**

O R D E R

ARBAB ALI HAKRO, J;- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as '**the Constitution**'), the petitioner seeks a direction to the official respondents to recover his three children, namely Paras Gul, Anmol Hoor and Muhammad Yousaf (hereinafter referred to as '**the minors**') and to produce them before this Court.

2. The petitioner is a police constable posted at Jacobabad. He alleges that he divorced his wife, Mst. Shamshad Naz, in September 2024. Her application under Section 491 of the Code of Criminal Procedure, 1898, for recovery of the minors from him was dismissed by the learned Additional Sessions Judge-I/(MCTC), Jacobabad, on 09.09.2024, and the parties were left to approach the Guardian Court.[1] She thereafter contracted a second marriage with respondent No.7. It is alleged that on 10.09.2026, respondents No.5 to 8, including her brothers and her present husband, entered the petitioner's house at Jacobabad, armed, and took the minors away, saying the minors belonged to their sister. On his report, FIR No.117

[1] Order dated 09.09.2024 in H.C.P. No.97 of 2024, annexure 'B' to the petition.

of 2026 under sections 364 and 450 PPC was registered at Police Station Civil Line, Jacobabad, on 18.09.2026.[2] The grievance is that the police have neither arrested the accused nor recovered the minors.

3. In response to the notice, the Senior Superintendent of Police, Jacobabad (respondent No. 3), has filed his statement, along with certified copies of the record of the learned Guardian Judge, Lahore.[3] It appears from the record that on 15.09.2026, Mst. Shamshad Naz instituted a petition under sections 7 and 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as '**the Act of 1890**'), seeking permanent custody of the minors. The order sheet of that date records her presence in person with the minors. On 16.09.2026, the learned Guardian Judge issued notice to the present petitioner for 03.10.2026 and directed him not to commit any illegal act in the matter of custody of the minors. The statement further shows that an investigation team has been constituted and that the FIR is under investigation. None has appeared for the private respondents.

4. Learned counsel for the petitioner contends that the minors have remained in the lawful custody of the petitioner since the order dated 09.09.2024; that they were removed from his house by force; and that the police have failed to recover them. He prays that the minors be produced before this Court and restored to the petitioner.

5. Learned Assistant Advocate General and learned Deputy Prosecutor General, assisted by the SDPO City and the SHO Police Station Civil Line, Jacobabad, submit that the minors have been traced, are with their real mother in Lahore, that the question of their custody is pending before the Guardian Court, and that the FIR is being investigated on its merits.

6. I have heard learned counsel for the petitioner and the learned law officers and have gone through the record.

7. Under Article 199(1)(b)(i) of the Constitution, this Court may direct that a person in custody within its territorial jurisdiction be brought before it, so that it may satisfy itself that he is not being held without lawful authority or in an unlawful manner. The power is available only where the Court is

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[2] Annexure 'E' to the petition.
[3] Statement of respondent No.3 with certified copies of the guardian petition and the order sheets dated 15.09.2026 and 16.09.2026.

satisfied that no other adequate remedy is provided by law. Where the person concerned is a child and the contest is between the parents, the Supreme Court has drawn the limits with care. In ***Nadia Perveen*** [4], it was held that the custody of minors can be brought before the High Court in its habeas corpus jurisdiction only if the children are of very tender age, have quite recently been snatched away from lawful custody, and there is real urgency in the matter. The jurisdiction is to be exercised sparingly, since the Guardian Judge himself has the power to recover minors and to regulate their interim custody. In ***Qurat-ul-Ain*** [5], the Supreme Court held that such a writ is not to be issued as a matter of course against a parent; that the High Court must first be satisfied that the remedy under the Act of 1890 would not be adequate and that the production of the child and handing the child over to the person petitioning are in the best interests of the child; that a mother does not lose the custody of her child merely because she has remarried; and that the forum to determine custody is the Guardian Court, the constitutional jurisdiction being an exception reserved for extraordinary cases.

8. On these principles, the petition cannot succeed. The minors are not untraced. According to the certified record placed by respondent No.3, they are with their real mother, who brought them before a court of law within five days of the alleged occurrence and has submitted the question of their custody to it. By the dates of birth given in the guardian petition, the eldest is past seventeen years, the second about ten, and the youngest above seven. None of them is of very tender age, and it is not the petitioner's case that their life or person is in any danger in their mother's house. The custody of a real mother cannot, on that fact alone, be termed one without lawful authority. Her second marriage is a circumstance bearing upon the welfare of the minors, which the Guardian Court is to weigh. The conditions laid down in ***Nadia Perveen*** (n.4 above) are thus not met.

9. There are, in addition, two versions of how the minors came to be with their mother. The petitioner alleges that they were taken by force. The mother has asserted before the Guardian Court that they were with her. She has not been impleaded in this petition, even though the petitioner's own pleading shows that the minors were taken on her account. No order

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[4] *Mst. Nadia Perveen v. Mst. Almas Noreen* PLD 2012 SC 758.
[5] *Mst. Qurat-ul-Ain v. Station House Officer, Police Station Saddar Jalalpur Jattan, District Gujrat* 2024 SCMR 486.

regarding her custody of the minors can be passed in her absence. A dispute of this nature also cannot be resolved in constitutional jurisdiction without recording evidence, and any finding upon it would prejudice the investigation of the FIR as well as the proceedings before the Guardian Court.

10. The petitioner is not without remedy. He has notice of the guardian petition. It is open to him to appear before the learned Guardian Judge, to place the order dated 09.09.2024 before that Court, to raise an objection to its territorial jurisdiction under Section 9 of the Act of 1890, to seek the production and temporary custody of the minors under Section 12, or to bring his own application under Section 25 before the Court of competent jurisdiction. The Guardian Court seized of the matter is also best placed to secure the minors' presence and ascertain their wishes. In the presence of this remedy and in the absence of any extraordinary circumstances, the conditions on which alone this Court may act under Article 199 of the Constitution are not satisfied.

11. So far as the allegation of abduction is concerned, the FIR is registered, and an investigation team has been constituted. The investigation will proceed in accordance with the law.

12. For the foregoing reasons, no case is made out for a direction under Article 199(1)(b)(i) of the Constitution. The petition, along with the listed applications, is **disposed of** as follows:

(i) The petitioner shall be at liberty to avail his remedies under the Act of 1890 before the Court of competent jurisdiction, where all pleas available to him, including those noted above, shall be decided on their merits.

(ii) The investigation in FIR No. 117 of 2026 at Police Station Civil Line, Jacobabad, shall be completed fairly and strictly in accordance with the law, and the report thereof shall be submitted before the concerned Court.

13. The observations made hereinabove are tentative and shall not prejudice either party before the Guardian Court or the trial Court.

JUDGE

Zulfiqar