

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date _____ Order with Signature(s) of Judge(s) _____

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mrs. Justice Kausar Sultan Hussain J.

C.P. No.D-4230 of 2022

Syed Mehdi Ali Kazmi

Versus

Province of Sindh & others

Hearing

1. For hearing of CMA No.18073/22
2. For hearing of main case

21.07.2022

Mr. Muhammad Jibran Nasir advocate for petitioner
Mr. Abdul Jalil Zubedi, AAG
M/s. Irfan Ahmed Memon, DAG and Irshad Ali, AAG
Mr. Abrar Ali Khichi, Addl: PG Sindh
DSP Muhammad Sajid, Crime Branch, SI Badar Shakeel
SHO PS Al-Falah, DSP Shoukat Shahani, AVCC, PDSP Raza
Mian (Legal) and PI Sajjad Ali (Legal)

ORDER

Muhammad Iqbal Kalhoro, J: Petitioner has moved this petition essentially for recovery of his minor daughter Dua-a-Zahra aged about 14/15 years from alleged detention of respondent No.7, Zaheer Ahmed, her husband, in terms of FIR No.159/2022, u/s 364-A & 216 PPC, Section 3(i) Prevention Trafficking in Persons Act, 2018 at Police Station Al-Falah, Karachi. Before this, an identical petition was filed, alleged detainee was recovered and produced. On her statement and a medical report determining her age as 17 years, she was set free and permitted to live with her husband. But when the matter landed before the Honorable Supreme Court against such order, the petitioner was advised to approach the relevant forum/trial court for constitution of medical board and further proceedings in the light thereof, if any. The medical board examined the alleged abductee consequently and declared her minor aged between 15 and 16 years. Such declaration, and report of Investigation Officer before the trial court highlighting his intent to recover the minor from Lahore where she was residing with her husband, arrest the

accused etc. prompted the petitioner to renew his effort for restoration of custody of minor daughter to him through this petition.

2. Meanwhile, alleged abductee Dua-a-Zahara finding it hard to live with her husband and wary of purported threats by her parents filed an application before the learned Special Judicial Magistrate, Data Darbar, Lahore for her lodgment in Darul Aman Lahore, and has accordingly been sent there vide order dated 19.07.2022. In view of such development, petitioner's counsel has requested for orders to shift her custody from Darul Aman Lahore to any Shelter Home, Darul Aman, or Child Institute/Home at Karachi, where the case is pending investigation for further proceedings in accordance with law.

3. Mr. Mohammad Amir Niaz Bhadera, advocate has filed Vakalatnama on behalf of respondent No.7 and has in fact opposed this request stating that this court has no jurisdiction in this petition to pass such order and that any such order is likely to prejudice right of his client on merits in the case. To support his claim, he has relied upon the case laws reported as **PLD 2021 Lahore 21, PLD 1972 SC 6, 1973 SCMR 189, 2019 SCMR 939 and PLD 2013 Lahore 243** that we have read for guidance.

4. This petition for enforcement of a writ in the nature of habeas corpus has indeed already served its purpose. The alleged abductee stands recovered and on her own application has been lodged in Darul Aman, Lahore. The Investigation Officer (IO) by referring to a letter dated 15.07.2022 by the Home Department Sindh to Home Department Punjab requesting for recovery of abductee states that already such efforts: recovery of abductee and now her shifting from Lahore to Karachi-- are afoot and as soon as a necessary permission is granted, he shall proceed to Lahore to seek custody of the abductee and produce her before the court seized with matter and/or lodge her in Darul Aman, Karachi etc. so that the proceedings arising of FIR could come to a logical conclusion as

per law. This stance has been supported by the learned counsel appearing for the State.

5. We have seen application of alleged abductee before the learned Magistrate, Lahore. It is clear that she is no more on good terms with her husband and does not want to live with him. Further, she has no place in Lahore to take shelter in for the time being and decide about future. It is also obvious that she being ostensibly afraid of parents is also not interested to reside with them. But in any case, her living in Lahore does not seem to be in her benefit from any angle either, particularly after her separation from her husband, and is likely to cause hindrance in smooth proceedings of the case. Her parents, who are her natural guarding are residing, and the case and the trial court are situated in Karachi. She is still a minor and a main witness in the case is required to participate in its proceedings. Hence she cannot be permitted to be on her own in Lahore till she attains majority and the case is finally disposed of. In such facts and circumstances, there appears to be no legal or otherwise impediment for this court in approving, and/or stopping the IO from performing his official duty and to seek, shifting of her custody from Darul Aman Lahore and her production before the trial court for the purpose of disposal or otherwise of the case and her lodgment in Panah Shelter Home, Darul Aman, Karachi or Shelter Home for Destitute & Orphan Children Sindh Karachi, as the case may be, to be decided by the court seized with the matter at the time of her production before it.

6. For any other relief like freezing of accounts of accused or their family members, et al raised by learned counsel for respondent No. 7, the parties are advised to approach the (trial) court which, we are sanguine, will attend to such ancillary matters and decide them according to law. The petition is disposed of in above terms. The observations made herein are not meant to prejudice the case of either party on merits before the trial court.

JUDGE

JUDGE

