

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.S-218 of 2024
(Mashooque Ali Vs Province of Sindh & others)

DATE **ORDER WITH SIGNATURE OF JUDGE**

Date of hearing and order 04-10-2024

Mr. Khuda Bux alias K.B Laghari, advocate for the petitioner a/w petitioner.

Mr. Dhani Bakhsh Mari, Assistant P.G a/w SIP/SHO Iftikhar Bajwa of P.S Kunri, Inspector Vijay Kumar, SHO P.S Tando Jan Muhammad along with Mst. Zainab alias Sabhagi.

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ORDER

Adnan-ul-Karim Memon, J. The petitioner Mashooque Ali claimed that his wife Mst. Zainab alias Sabhagi and minor daughter Benazir have been detained by her parents and sought their immediate recovery, and due to this reason, this court vide order dated 27-09-2024 directed the official respondents for the production of the alleged detainees before this court.

2. Learned counsel for the petitioner submits that the detainee is being forced into a divorce by her parents. Detainee has converted to Islam, married the petitioner, and has a child. He argued that earlier the petitioner filed a constitution petition (C.P No.S-244/2021) before the Circuit Court in Hyderabad and this court disposed of the petition after granting protection to the couples. Learned counsel further submitted that Mst. Zainab alias Sabhagi, filed another Cr. Misc. Application No. 524/2021 before the Circuit Court Hyderabad, and in her statement under Section 164 Cr. P.C stated that she belonged to the Hindu community before embracing Islam; that she contracted marriage with the petitioner through Nikah on 22-05-2021 after embracing Islam from the Madrsa Anjuman-e-Gulaman-e-Mustafa Pakistan; that she enjoyed a happy and harmonious matrimonial life with the petitioner. Learned counsel pointed out that on April 27, 2024, the petitioner was the victim of a crime and lodged FIR No. 44/2024 at Tando Jan Muhammad Police Station in Mirpurkhas District and the following day, on April 28, 2024, respondent Kanji, lodged a counter FIR (No. 45/2024) against the petitioner. He added that the father of the detainee requested the petitioner to let the detainee go with him to meet the detainee's ill mother and her father promised to return the detainee

after the meeting. However, before he could return the detainee, she filed a family suit for dissolution of marriage against the petitioner. The petitioner seeks court protection to prevent forced divorce and ensure detainee's safety.

3. Section 491 of the Cr.P.C. empowers the High Court to issue the writ of habeas corpus, which is used to challenge the legality of a person's detention. It provides a remedy for those who believe they are being unlawfully detained, whether by the government or private individuals. The primary purpose of Section 491 Cr. P.C is to ensure that the person is detained under due process of law. And the detention is not based on whim or caprice.

4. This court ordered police to recover the detainees. Inspector Vijay Kumar produced Zainab alias Sabhagi and minor Benazir. Zainab alias Sabhagi denied the allegations through her statement recorded by the police present in court and refused to go with the petitioner. She wants to go with her father. Since Zainab alias Sabhagi is a sui juris lady and Benazir is a suckling baby, they are free to go wherever they desire.

5. Before parting with this order it is directed that the Police officials shall protect Mst. Zainab alias Sabhagi and ensure no harm is caused to her by the petitioner, or to her parents at any cost and if any harassment is caused to her by any of the parties, the police shall act swiftly.

6. The controversy as raised by the parties about the custody of the minor needs to be looked into by the learned Guardian and Wards Court concerned, if approached and the decision thereof shall be made within a reasonable time, keeping in view the welfare of the minor strictly under the law. On the aforesaid proposition, I am fortified by the decision rendered by the Supreme Court of Pakistan in the cases of *Humayun Hassan v. Arslan Humayun and another*, **PLD 2013 SC 557** and *Mst. Qurat-ul-Ain Vs. Station House Officer, Police Station Saddar Jalalpur Jattan, District Gujrat (2024 SCMR 484)*.

7. In view of the statement of the alleged detainee, no case of illegal detention is made out, and the purpose of filing the instant constitution Petition under Article 199 of the constitution read with section 491 Cr. P.C. has been served; therefore, the same stands disposed of.

JUDGE