

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Jawad Akbar Sarwana

Criminal Misc. Application No. No.778 of 2025

Applicant : Mst. Madiha Hashim, through  
Mr. Qaim Ali Memon Advocate

Respondents : (i) Umer Khalid

(ii) The SHO PS Tipu Sultan  
through Mr. Tahir Hussain Mangi  
APG Sindh

Detenue : Mehrma (7.5 years old)

Date of Hearing : 12.09.2025

Date of Decision : 18.09.2025

## ORDER

**Jawad Akbar Sarwana, J.:** Applicant, **Mst. Madiha Hashim, residing in Islamabad** and mother of the alleged detainee, Miss Mehrma, is aggrieved by the impugned Order dated 16.08.2025 passed by the Xth Additional Sessions Judge, Karachi East in Habeas Corpus Petition (“HCP”) No.398/2025. During the HCP proceedings, the respondent no.2/Umer Khalid (former husband), **residing in Naval Housing Scheme Karsaz, Karachi**, also produced Mehrma before the Xth Addl. Sessions Court. However, subsequently, after hearing the parties and keeping in view the Senior Civil Judge-V (Guardian/Family Court) West Islamabad (hereinafter referred to as “Islamabad Guardian Judge”), compromise/consent order dated 12.05.2025, the learned Xth Addl. Sessions Judge dismissed the applicant/mother’s HCP No.398/2025. Aggrieved by the impugned Order, the applicant/mother has preferred this appeal under Section 561-A Cr.P.C. before the High Court of Sindh at Karachi.



2. According to the documents filed by the applicant/mother and the impugned Order dated 16.08.2025, it appears that the applicant/mother and respondent no.2/father, by way of a compromise application filed by the parties (available on page 35 of the file) obtained a compromise/consent order dated 12.05.2025 from the Islamabad Guardian Judge (available on page 31 of the file). According to the terms of the compromise, the custody of the minor daughter, Miss Mehrma, was handed over to her father/respondent no.2 in Islamabad, and the applicant/mother was to be given custody of her daughter on a fortnightly basis (i.e. every 15 days from 9:00 a.m. to 6:00 p.m. in Karachi). It appears that subsequently, respondent no.2/father, apparently, violated (and/or is allegedly still in violation of) the compromise/consent order dated 12.05.2025, passed by the Islamabad Guardian Judge. This is when, seemingly, the applicant/mother filed the above-mentioned HCP in Karachi, which the learned Xth Addl. Sessions Judge, Karachi East, dismissed vide the impugned Order dated 15.08.2025 with directions to the applicant/mother to approach the Guardian Court having competent jurisdiction.

3. I heard the applicant/mother's Counsel and reserved the matter on maintainability on its very first hearing date. From the facts narrated above, it is clear that the dispute regarding the custody of the minor girl has yet to be amicably settled between the parties, in spite of the Islamabad Guardian Judge's compromise/consent order. However, given the presence of the said order dated 12.05.2025, no question of any forcible detention in Karachi of Miss Mehrma arises. The Islamabad Guardian Judge handed custody of Miss Mehrma in Islamabad from her mother (the applicant) to her father (the respondent no.2) with the consent of the parents. The same compromise/consent order has not been set aside and is now binding on the parties. Further, as of the date of the impugned Order, i.e.



15.08.2025 and the hearing of this application on 12.09.2025 – about a month later - the welfare of the minor did not appear to be in danger. The detainee was produced by the respondent no.2/father, before the Xth Addl. Sessions Court in Karachi. No cause for concern was articulated in the impugned Order by the learned Addl. Sessions Judge, that would call for this bench to issue an immediate notice to the Respondents for the production of the minor. Finally, no exceptionality was identified to me that the interest and welfare of the minor demanded that Miss Mehrma be immediately produced before this bench,<sup>1</sup> except that the applicant/mother has pleaded that the minor is residing with the sister of the respondent no.2/father and not the respondent no.2/father. She also pleaded the minor's flight risk. This is/was no ground for the production of the minor. Therefore, in the facts and circumstances, I proceeded to decide the application on its second hearing date on maintainability.

4. At the outset, the custody of the minor with the respondent no.2/father is neither illegal nor constitutes unlawful confinement nor wrongful detention. If this were the case, perhaps I could have considered restoring the custody of the minor in Karachi to the applicant/mother with whom such custody vested in Islamabad prior to the compromise/consent order passed by the Islamabad Guardian Judge. The absolute authority for the determination of custody of a minor vests in a Court of Guardians and Ward Act, and in the instant case, the Islamabad Guardian Judge who decided the case of custody of Mis Mehrma. Now the matter of her custody is exclusively in the hands of the Guardian Judge in Islamabad, and no justification is made out in the pleadings for either issuing directions for the production of the minor or, at present, for any intervention by this bench in Karachi.

5. It is pertinent to mention here that at the time when the parties recorded the compromise/consent order before the Islamabad

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<sup>1</sup> PLD 2012 SC 758



Guardian Judge, the minor was in the custody of the applicant/mother. Further, the custody was handed to the respondent no.2/father in Islamabad knowingly, that the minor will be residing in Karachi (beyond the territorial jurisdiction of the Islamabad Guardian Judge), which is presumably why the issue of custody for the applicant/mother is mentioned on a fortnightly basis in Karachi and not in Islamabad. The mother's custody clause in Karachi is unclear. Nevertheless, in the circumstances, it cannot be argued by the applicant/mother that Mehrma is being illegally or improperly confined or detained in Karachi by her respondent no.2/father.

6. The applicant/mother filed HCP No.398/2025, and this application, in Karachi, as the minor, Mehrma, is residing in Karachi, and within the territorial jurisdiction of the Karachi City Courts/High Court. However, the fact of the matter is that the Islamabad Guardian Judge has decided the issues of custody of Mehrma, and the jurisdiction of the Guardian Judge was/is exclusive under the Family Courts Act, until the said compromise/consent order is set aside. Till such time, unless in some exceptional circumstance(s), the substantive custody and guardianship of the minor cannot be decided by any other Court other than the Islamabad Guardian Judge. All substantial issues concerning the compromise/consent order are to be decided by the same Court which recorded such compromise/consent between the parties in Islamabad.

7. Yet, this does not mean that the applicant/mother is without remedy in terms of either modification, variation or execution of the compromise/consent order dated 12.05.2025. Indeed, the applicant/mother can approach the Islamabad Guardian Judge if she is aggrieved by the non-compliance and/or any violation of the Islamabad Guardian Judge's compromise/consent order by the respondent no.2/father in Karachi. To this end, depending on the outcome of those proceedings (i.e. before the competent Guardian



Court), the entire legal and procedural machinery of Pakistan family law under the **Guardians and Wards Act, 1890**, as read with the **Family Courts Act, 1964** and the **Civil Procedure Code, 1908**, etc., is available to the applicant/mother to enforce and execute the Islamabad Guardian Judge's compromise/consent order through the competent Court's in Karachi against the respondent no.2/father concerning her daughter, Miss Mehrma, both presently residing in Karachi.

8. The applicant/mother has also apprehended that her minor daughter may be removed from the jurisdiction of the Pakistan Courts. This, too, must be seen in the context of the compromise/consent order passed by the Guardian & Wards/Family Judge in Islamabad and can be addressed by the applicant/mother before the Islamabad Guardian Judge.

9. Given the above, there is no defect in the impugned Order passed by the Xth Sessions Court Karachi East, and I do not find any illegality, irregularity, or legal oversight in the impugned Order. Consequently, this cr. misc. appln. is disposed of for the above terms.

10. Order accordingly.

**J U D G E**