

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No. S- 1138 of 2025.

Petitioner : Mst. Rashida Bux present in person.

Respondents : Province of Sindh & others through
Mr. Muhammad Javed, A.AG.

Date of Hearing : 10.11.2025.

Date of Order :

O R D E R

TASNEEM SULTANA, J.:- Through this writ petition, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 491, Cr.P.C., seeking production of her daughter and alleging unlawful restraint by private respondents.

2. The case of the petitioner, as pleaded in the petition, is that the alleged detainee Muntaha Bux, daughter of the petitioner Mst. Rashida Bux, stated to be aged about 14 years, left the house of the petitioner on 23-07-2025 and was allegedly taken away from her lawful guardianship by Abdul Haq, Sibyani and Imran Abbasi, which led to registration of FIR No.438 of 2025 under section 365-B, PPC at Police Station Mominabad, Karachi West. It is further averred that despite efforts and approaches to the police authorities, the alleged detainee was not recovered, whereafter the present petition was filed.

3. Learned counsel for the petitioner contended that the alleged detainee is a minor and that any consent attributed to her carries no legal consequence. It was argued that the petitioner, being the natural guardian, has been deprived of lawful custody and that the alleged detainee's continued stay away from the petitioner amounts to unlawful restraint, attracting the jurisdiction of this Court under section 491, Cr.P.C. It was further submitted that recording of a statement under section 164, Cr.P.C before Magistrate concerned, does not, by itself, oust the jurisdiction of this Court where the welfare and lawful guardianship of a minor are involved.

4. Learned AAG for the State, along with police officials of Police Station Khokhrapar and the Incharge, CIC Saudabad, Korangi,

Karachi, were present and submitted that the alleged detainee was produced before a competent Court and that her statement under section 164, Cr.P.C. was recorded in accordance with law, wherein she denied abduction, asserted her own volition and disclosed her place of residence. It was submitted that the matter does not fall within the ambit of section 491, Cr.P.C.

5. Heard. Record perused.

6. At the very outset, it reflects from the petitioner's own pleadings, particularly paragraph No.8 of the writ petition, that the alleged detainee was produced before the learned Judicial Magistrate and that her statement under section 164, Cr.P.C. was recorded. It is further admitted therein that the petitioner herself appeared before the learned Magistrate and sought custody of the alleged detainee or, in the alternative, her placement in a shelter home, which request was declined. This admitted factual position has direct bearing on the invocation of extraordinary jurisdiction under section 491, Cr.P.C.

7. The record placed before this Court includes the statement of the alleged detainee recorded under section 164, Cr.P.C. The said statement was recorded on oath by a competent Judicial Magistrate and is accompanied by a certificate certifying that it was made freely and voluntarily, without any pressure or coercion, after being read over and explained to the maker. In her statement, the alleged detainee stated her age as 16 years; that she left the house of the petitioner on 23-07-2025 of her own free will; that no one abducted her and no force or coercion was exercised upon her; that she went to the house of Abdul Haq, where his father refused to keep her or to agree to marriage and intended to send her back to her parents' house, whereafter she herself left; and that she is presently residing of her own choice with her friend Fiza at Gulshan-e-Maymar. She further stated that her statement was being made without fear or pressure.

8. It also reflects from the contents of writ petition itself that the petitioner was well within knowledge of the material facts, including the appearance of the alleged detainee before the learned Judicial Magistrate and the recording of her statement under section 164, Cr.P.C., which facts have been expressly pleaded. The present proceedings, therefore, were initiated with full awareness of the judicial record already in existence, and are not based on any subsequent or unknown development.

9. The jurisdiction exercised by this Court under Article 199 of the Constitution read with section 491, Cr.P.C. is extraordinary and summary in nature and is confined to examining whether a person is being held in illegal, secret or involuntary restraint. Where the alleged detainee has already appeared before competent judicial fora and has, through a judicially recorded statement under section 164, Cr.P.C., asserted her volition, denied abduction and disclosed her whereabouts, the essential element of unlawful or clandestine restraint is prima facie absent. Any grievance thereafter pertains to custody or guardianship or the legal consequences flowing from age, which are matters to be examined by the competent forum under the relevant law and do not warrant exercise of habeas corpus jurisdiction.

10. Furthermore, the prayer clause of the petition cannot be examined in isolation from the petitioner's own admission that the alleged detainee appeared before the learned Magistrate and that her statement under section 164, Cr.P.C. was recorded. Once such judicial proceedings have taken place and the alleged detainee's whereabouts stand disclosed through her own statement, the extraordinary writ under section 491, Cr.P.C. is not attracted.

11. In view of the foregoing, no case is made out for exercise of the extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution read with section 491, Cr.P.C. Accordingly, this constitutional petition is dismissed. However, petitioner is at liberty to avail legal remedy as may be available to her under the relevant law before the competent forum, if so advised.

12. It is clarified that the observations made hereinabove are based on a tentative assessment of the record for the purpose of disposal of the present petition alone and shall not prejudice the rights of either party, nor shall they influence the merits of any proceedings pending or to be initiated before any competent forum in accordance with law.

JUDGE