

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 3530 of 2026
 [Mst. Muqadas and another versus Government of Sindh & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
	Before: Mr. Justice Adnan-ul-Karim Memon <u>Mr. Justice Adnan Iqbal Chaudhry</u>

Date of hearing & order : 15-07-2026

Mr. Muhammad Ramzan, Advocate for the Petitioners along with Petitioners.

Syed Ali Ahmed Zaidi, Additional Advocate General, Sindh.

Mr. Amna Ansari, Additional Prosecutor General, Sindh along with DSP/Legal, Sajid Gujjar, SIP, Ghulam Hussain, P.S. Sukhan, Malir, Karachi and SIP Muhammad, P.S. Tano Bago, Badin.

ORDER

Adnan-ul-Karim Memon, J. The petitioners, Muqadas and Shahid Ali, have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following relief(s): -

- a. *To restrain the respondent No. 8 to 16 from using criminal force and action against the petitioner No.1, her husband and relatives of her husband and further not to interfere in the matrimonial life of the petitioners.*
- b. *To record the statement of petitioner no.01 and in view of the statement, the FIR No: 91/2026 u/s 365-B & 34 PPC of P.s Tando Bago may be quashed being false and fabricated.*
- c. *To suspend the operation of FIR No: 91/2026 P.S Tando Bago and restrain the official respondent no. 6 & 7 not to arrest anybody, including petitioner No. 02 and his relative, till final decision of the petition.*
- d. *To direct the respondent No. 7 not to harass the petitioners in any manner and not initiate any sort of proceeding based on fake & false reports of the respondent No.8 to 16..*
- e. *To direct the respondent No. 1 to 7 to provide legal protection to the life, honor and dignity of the petitioners and their family members. .*

2. Learned counsel for the petitioners submits that Petitioner No.1, a 19-year-old Muslim woman, being sui juris, voluntarily left her parental home and, of her own free will and choice, solemnized marriage with petitioner No.2 on 13.02.2026 after executing an affidavit of free will. It is submitted that despite the

lawful marriage, the parents and relatives of petitioner No.1, being dissatisfied with the union, have threatened the petitioners with *Karo Kari* (honour killing), subjected them and the family of petitioner No.2 to continuous harassment, and, with the support of influential persons, attempted to implicate them in false criminal proceedings. In furtherance thereof, respondent No.8 lodged FIR No.91/2026 under Sections 365-B and 34 PPC at Police Station Tando Bago, alleging kidnapping, although petitioner No.1 was neither abducted nor compelled, but had voluntarily married petitioner No.2. Learned counsel contends that the FIR is false, mala fide, and an abuse of the process of law, while the police have also been conducting unlawful raids at the houses of petitioner No.2's relatives, threatening and harassing them. It is further submitted that, owing to serious threats to their lives, the petitioners have been compelled to leave their native village and are presently residing in Karachi after seeking protection from the authorities. The petitioners, therefore, seek protection of their life, honour, and dignity, restraint against further harassment, suspension and quashment of the impugned FIR, and directions restraining the police from taking coercive action against petitioner No.2 and his family.

3. Respondent Nos. 8 and 9 filed counter Affidavits and submit that the petition is misconceived, based on concealment of material facts, and the petitioners have not approached this Court with clean hands. It is contended that petitioner No.1 is the daughter of respondent Nos.8 and 9 and, according to her B-Form, school records, Secondary School Certificate documents, and other official educational records, her date of birth is 15.02.2009. Consequently, she was a minor and below the statutory age of eighteen years at the time of the alleged marriage. It is submitted that while appearing in her Secondary School Certificate examinations, petitioner No.1 left her home on 28.04.2026 on the pretext of attending her last examination but instead went with petitioner No.2 to Karachi. Thereafter, the petitioners forwarded through WhatsApp an affidavit of free will and a Nikahnama, whereupon respondent No.8 lodged FIR No.91 of 2026 under Sections 365-B and 34 PPC for the recovery and protection of his minor daughter. They further submit that the alleged marriage is a child marriage prohibited under the Sindh Child Marriage Restraint Act, 2013, which criminalizes not only the contracting of such marriage but also its solemnization, facilitation, promotion, and abetment. It is submitted that the official documents relied upon by the respondents are public documents carrying a presumption of correctness, conclusively establishing that petitioner No.1 was below eighteen years of age. Therefore, the petitioners cannot seek constitutional protection for an act expressly prohibited by law, and the alleged affidavit of free will or Nikahnama cannot validate an illegal child marriage or extinguish criminal liability. It is further submitted that the impugned FIR was lodged bona fide, without mala fide

intent, solely to secure the safety, welfare, education, and lawful custody of petitioner No.1, and that the allegations disclosed therein, together with the material collected during investigation, prima facie constitute offences under the Pakistan Penal Code as well as the Sindh Child Marriage Restraint Act, 2013. They contend that the petitioners have deliberately suppressed the true age of petitioner No.1, filed the present petition only to obstruct a lawful criminal investigation and evade prosecution, and falsely alleged harassment against the respondents, who are respectable and law-abiding citizens. It is, therefore, prayed that the interim order dated 03.06.2026 be recalled, petitioner No.1 be restored to the custody of her parents, the investigating officer be permitted to proceed with the investigation in accordance with law, and the constitutional petition be dismissed with costs.

4. Learned APG, based on comments submitted by respondent No.6, submits that the police have acted strictly in accordance with law and have neither caused any inconvenience nor harassment to the petitioners. It is submitted that upon registration of FIR No.91/2026 under Sections 365-B and 34 PPC at Police Station Tando Bago on the complaint of respondent No.8, the matter was entrusted to the Investigating Officer under the supervision of the DSP Complaint Cell, Badin. She added that during the course of investigation, statements of witnesses were recorded, the place of occurrence was inspected, one nominated accused obtained pre-arrest bail, while the remaining accused are yet to be arrested. As the statutory period under Section 173 Cr.P.C. expired, an interim challan was submitted before the competent Court, whereas the investigation could not be concluded owing to the pendency of the present petition. It is further submitted that the interim order dated 03.06.2026 passed by this Court has been duly communicated to the SHO and the Investigating Officer for strict compliance, and directions have also been issued to provide legal protection to the petitioners, if required.

5. During the investigation, the statement of petitioner No.1 was recorded by the Investigating Officer, wherein she stated that she is eighteen years of age, had solemnized marriage with petitioner No.2 of her own free will and without any coercion, and categorically denied having been abducted. She further stated that the FIR lodged by her father under Sections 365-B and 34 PPC was/is false and requested that the allegation of kidnapping be treated as incorrect, as she had voluntarily left her parental home and was residing with her husband.

6. We have heard the learned counsel for the parties and perused the available material.

7. It appears that the controversy essentially revolves around two disputed questions of fact, namely, (i) the age of petitioner No.1 on the date of the alleged marriage, and (ii) the legality and consequences of the alleged Nikah in light of the Sindh Child Marriage Restraint Act, 2013. The petitioners maintain that petitioner No.1 is a major, had voluntarily contracted marriage with petitioner No.2 and was never abducted, whereas respondent Nos.8 and 9 assert that she was born on 15.02.2009, as reflected in her B-Form and educational record, rendering the alleged marriage a child marriage prohibited under the Sindh Child Marriage Restraint Act, 2013. These are seriously disputed factual issues requiring appreciation of evidence, which cannot appropriately be undertaken in the constitutional jurisdiction under Article 199 of the Constitution.

8. It is also an admitted position that FIR No.91 of 2026 has already been registered, investigation has been carried out, the statement of petitioner No.1 has been recorded by the Investigating Officer, and an interim challan under Section 173 Cr.P.C. has been submitted before the competent Court. Consequently, the criminal law has already been set in motion and the questions regarding the correctness of the age recorded in the official documents, the voluntariness of the marriage, the applicability of the Sindh Child Marriage Restraint Act, 2013, and the criminal liability, if any, of the accused persons are matters falling within the exclusive domain of the Investigating Officer and the competent trial Court.

9. The Federal Constitutional Court has recently observed that the Child Marriage Restraint Act criminalizes the solemnization of a child marriage but does not, by itself, declare such marriage void or voidable; nevertheless, the statutory penal consequences remain enforceable in accordance with law. Therefore, where the age of the alleged bride itself is disputed and supported by competing material, the matter necessarily requires determination by the competent criminal Court after recording evidence rather than in proceedings under Article 199 of the Constitution.

10. Accordingly, this Court is not inclined to exercise its extraordinary constitutional jurisdiction either to quash the FIR or to prejudge the disputed factual controversies. However, as petitioner No.1 has consistently stated before the Investigating Officer that she voluntarily accompanied petitioner No.2 and was not abducted, the Investigating Officer shall objectively consider her statement, and submit a summary report before the Court for final decision by the concerned Magistrate in terms of the statement of the lady petitioner, without being influenced by any observation contained in this order.

11. The official respondents are further directed to ensure that no person is subjected to unlawful harassment or coercive measures beyond the authority of

law and, if any genuine threat to the life or liberty of either party exists, appropriate protection shall be afforded strictly in accordance with law. Subject to these observations, the constitutional petition is disposed of, leaving all questions of fact and law to be determined by the competent family Court.

JUDGE

JUDGE

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