

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constitutional Petition No. S- 318 of 2024.
(Aijaz-ur-Rehman vs Mst. Naila and others)

Date	Order with signature of Judge
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1. For orders on office objection A.
2. For orders on MA No.668 of 2024. E/A.
3. For orders on maintainability of main case.

09.10.2026.

Mr. Riaz Muhammad Arain, Advocate.
Mr. Saeed Akbar Siyal, Assistant Advocate General, Sindh.
Mst. Naila, Respondent No.1, along with baby Abrish Eman,
is present.

Ali Haider 'Ada' J.- The petitioner, being the father of the minor, namely Abrish Eman, aged about 7-8 years, instituted Guardianship Application No.25 of 2022 under Sections 7, 10 and 25 of the Guardians and Wards Act, 1890, before the learned Family Judge, Jacobabad. The learned Family Judge, vide judgment dated 17.04.2023, allowed the petitioner visitation twice a month, on the first and third Saturdays of each calendar month, for three hours, from 11:00 a.m. to 2:00 p.m., subject to payment of Rs.500/- for each meeting. It was further ordered that, on the occasions of Eid-ul-Fitr and Eid-ul-Adha, an additional meeting would be held on the first working day after the holidays, from 11:00 a.m. to 2:00 p.m. The respondent, Mst. Naila, was directed to produce the minor before the trial Court at 11:00 a.m. on every first and third Saturday, while the petitioner was required to pay Rs.500/- as visitation charges for each meeting.

2. The aforesaid judgment was assailed by the petitioner through Family Appeal No.02 of 2023 before the learned Additional District Judge-I, Jacobabad, which was dismissed vide judgment dated 25.05.2024, thereby maintaining the findings of the trial Court.

However, it was further observed that, upon the minor attaining puberty, her custody would remain with respondent No.1, Mst. Naila.

3. Feeling aggrieved by both judgments, the petitioner has approached this Court through the instant petition.

4. Learned counsel for the petitioner submits that, considering the overall facts and circumstances of the case, the petitioner, being the father of the minor, is entitled to reasonable visitation rights. He further submits that the petitioner has already deposited the amount required to be paid in compliance with the previous orders, whereas an outstanding maintenance amount of Rs.130,000/- remains payable, which he undertakes to pay in instalments. Learned counsel places reliance upon the judgment reported as 2018 SCMR 1991, contending that the Hon'ble Supreme Court of Pakistan laid down eleven conditions therein. He submits that the petitioner confines his prayer to the conditions specified in the said judgment and seeks similar visitation arrangements in his favour.

5. On the other hand, Mr. Muhammad Afzal Jagirani, holding brief for learned counsel for the respondent, has appeared. It is astonishing that learned counsel for the respondent, despite having appeared and sought fixation of the matter on a date and time of his choice, namely 10:30 a.m., failed to appear before this Court without any sufficient justification. Such conduct causes unnecessary delay in the disposal of proceedings, particularly where the matter is ripe for adjudication. The Hon'ble Supreme Court has also deprecated the practice of seeking unnecessary adjournments, thereby keeping proceedings pending when they are ready for final disposal.

6. It is pertinent to note that, on 25.09.2026, respondent No.1 appeared before this Court and requested that her counsel be heard. Nevertheless, she expressed her willingness to accept the terms and conditions laid down in 2018 SCMR 1991, to the extent of conditions

Nos. i, v, vi, viii, and xi, while expressing disagreement with conditions Nos. ii, iii, iv, and vii. As regards condition No. ix, she submitted that the same was not required. Counsel for the respondent, on the previous date of hearing, placed reliance upon the judgment reported as PLD 2026 Supreme Court 238, contended that the wishes and consent of the minor are relevant considerations in determining visitation and custody arrangements. Conversely, learned counsel for the petitioner submits that the said judgment is distinguishable from the facts of the present case.

7. The learned Law Officer supports the grant of visitation rights, subject to appropriate conditions, with a view to resolving the dispute between the parties.

8. Heard and perused the material available on record.

9. This Court is mindful of the fact that, following the dissolution of marriage, a minor child may have a stronger emotional attachment to the mother; however, this does not mean that the father is wholly deprived of his right to maintain contact with the child and enjoy his company. The petitioner has expressed his willingness to pay the entire outstanding maintenance amount, besides fulfilling his obligation to pay monthly maintenance of Rs.12,000/-, subject to an annual increase of 10%.

10. It is further noted that respondent Mst. Naila, on the previous date of hearing, agreed to the conditions laid down in **Mst. Madiha Younus v. Imran Ahmed (2018 SCMR 1991)**, namely conditions Nos. (i), (v), (vi), (viii) and (xi), subject to certain modifications. However, she did not consent to conditions Nos. (ii), (iii) (iv) and (vii).

11. For ready reference, the conditions laid down by the Hon'ble Supreme Court of Pakistan in **Mst. Madiha Younus v. Imran Ahmed (2018 SCMR 1991)** are reproduced as under:

- (i) *Both the minors shall remain with the mother.*
- (ii) *On every alternate weekend minors may reside with the father, who shall pickup the minors from the house of the mother on Friday at about 8:00 p.m. late evening and shall drop the minors at the house of the mother on Sunday by 01:00 p.m. in the afternoon.*
- (iii) *During summer vacations the custody of the minors shall be handed over to the father on the 1st Sunday of the summer vacations so declared by the School/Government and shall be returned to the mother at evening on the 4th Sunday during the vacations so that minors may have four weeks to spent with their father*
- (iv) *Winter vacations were generally due from 21st December to 30th December. First week of the winter vacation shall be spent by the minors with their father and second week with the mother.*
- (v) *During Eid-ul-Fitr the minors shall celebrate Eid with their father from chand raatat 8:00 p.m. till second day of Eid upto 08:00 p.m.*
- (vi) *On Eid-ul-Adha the mother shall allow the minors to celebrate Eid with their father who shall pick the minors from the residence of mother on the second day of Eid-ul-Adha at 11:00 a.m. in the morning till 3rd day of Eid at 10:00 p.m. or earlier.*
- (vii) *Minors may spent alternate unscheduled holidays with their father from 10:00 a.m. to 08:00 p.m. in the evening.*
- (viii) *The father shall bear all expenses of the minors i.e. school fees, uniforms, van fees as well as other miscellaneous expenses as may be needed for the minors.*
- (ix) *In addition to such expenses the father shall also provide a sum of Rs.5,000/- per month for each minor for their other personal needs and requirements.*
- (x) *In case there was any family occasion for which the father desired and wished that his sons may also attend, he shall inform the mother who shall not unreasonably stop the minors from attending such family events and/or functions.*
- (xi) *Both the mother and father shall not do any act that may prejudice the minors' mind towards the other parent.*

12. However, respondent No.1/mother did not agree with the remaining conditions laid down in the aforesaid judgment. Therefore, in order to resolve the dispute between the parties while safeguarding their respective rights and ensuring the welfare of the minor, the instant petition is disposed of in the following terms and

conditions, which shall be duly complied with by the parties and all concerned functionaries without fail:

- (a) The minor shall remain in the custody of the mother.
- (b) On the first Saturday of every month, the minor shall stay with the father. The mother shall drop the minor at the Family Court, Jacobabad, at about 09:00 a.m., from where the father/petitioner shall take custody of the minor. The father shall return the minor to the mother on the following Sunday at the Police Station Airport, Jacobabad, at about 01:00 p.m. The concerned SHO/Duty Officer is directed to ensure compliance with the aforesaid arrangement and the timely handover of the minor.
- (c) During the summer vacations, the father shall be entitled to the custody of the minor for one week, commencing from the first Sunday of the summer vacations as declared by the school or the Government. The minor shall be returned to the mother on the following Sunday at about 01:00 p.m. The pickup and drop-off shall take place at the Police Station Airport, Jacobabad, and the concerned SHO/Duty Officer shall ensure compliance with this arrangement.
- (d) During the winter vacations, the father shall be entitled to the custody of the minor for three days, from 25th December to 27th December. The minor shall be returned to the mother on 28th December at about 01:00 p.m. The pickup and drop-off shall take place at the Police Station Airport, Jacobabad, and the concerned SHO/Duty Officer shall ensure compliance with this arrangement.
- (e) On the occasion of Eid-ul-Fitr, the minor shall celebrate Eid with the father from the second day of Eid, as agreed by the mother, and shall be returned to the mother on the following day. The pickup and drop-off shall take place at the Police Station Airport, Jacobabad, and the concerned SHO/Duty Officer shall ensure compliance with this arrangement.
- (f) On the occasion of Eid-ul-Adha, the mother shall allow the minor to celebrate Eid with the father on the third day of Eid, as agreed by the mother, and the minor shall be returned to the mother on the following day. The pickup and drop-off shall take place at the Police Station Airport, Jacobabad, and the concerned SHO/Duty Officer shall ensure compliance with this arrangement.

(g) The father/petitioner shall pay the outstanding maintenance amount within three months and shall continue to pay the monthly maintenance regularly in accordance with the terms and conditions determined by the Courts below.

(h) Both parents shall refrain from doing anything that may prejudice the minor's mind against the other parent or adversely affect the minor's relationship with either parent.

13. Keeping in view the aforesaid facts and circumstances, the instant petition stands disposed of in the above terms. A copy of this order shall be communicated to the SSP, Jacobabad, for information and necessary compliance.

JUDGE