FORM No. HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W.P. No. 89 of 2025

Hamna Fahad Vs. CCPO, Lahore etc.

Sr. No. of order/ proceedings	*Date of order/ Proceeding*	*Order with signature of Judge, and that of Parties' counsel, where necessary*
	03.01.2025	Rana Maqsood ul Haq, Advocate for petitioner. Barrister Hassan Khalid Ranjha, Additional Advocate General. Mr. H.M. Zeeshan Khan, Advocate for respondent No.3. Through this constitutional petition, the petitioner seeks recovery of her daughter namely Mirha Fahad aged about 06 years and son Ismail Fahad aged about 08 years (herein after called the detenues) from alleged illegal and improper custody of respondent Nos. 3 and 4 who respectively are father and paternal uncle of the detenues. **2**. On 02.01.2025 notice was issued to the SHO P.S. Kahna Nau, Lahore (respondent No.2) to recover the afore named detenues and produced them before this Court for today and in compliance thereof, the detenues are available in the Court accompanied their father respondent No.3 and his learned counsel. **3**. Learned counsel for the petitioner states that petitioner and respondent No.3 alongwith minor detenues reached at Allama Iqbal International Airport, Lahore from Dubai on 01.01.2025 at about 10:00 p.m. where respondent No.3 with active connivance of respondent No.4 snatched the detenues from the petitioner alongwith her handbag wherein she was carrying her documents including passport, ID card, marriage certificate,

birth certificates of children etc., upon which the petitioner made a phone call to the police at "***15***". In the aforementioned scenario the petitioner seeks recovery of the detenues for the purpose of handing over their custody to her.

4. On the other hand, respondent No.3 accompanied by his lawyer has placed on the record order dated 02.01.2025 passed by learned Guardian Judge-V, Lahore, wherein on an application under Section 7 read with Section 25 and other enabling provisions of the Guardian and Wards Act, 1890 for the appointment, declaration and custody of minors, interim relief has been granted to respondent No.3 in the following terms:

> *"The minors are present in the Court, although the minors are tendered ages but the paternal aunt of minors is living with the petitioner and as per stance of petitioner paternal aunt of minors is very healthy and she is ready to take proper care and attention. Learned counsel for the petitioner further stated that real mother of minors has herself left the minors in the house of petitioner and thereafter she did not come back to see the minors, so, relying upon the affidavit and other documents brought on record, respondents are restrained from snatching the minors from the custody of the petitioner illegally and unlawfully till next date. However, this ad-interim injunctive order will not affect any legal/judicial proceedings of any competent forum and shall stand vacated if not extended specifically on the next date of hearing."*

5. Learned counsel for respondent No.3 states that as the matter of custody of detenues is being regulated by learned Guardian Judge, wherein next date is fixed for hearing on 17.01.2025, therefore, to prevent causing prejudice to rights of the parties, this Court may refrain itself from passing

any order in the matter due to alternate remedy already availed by respondent No.3.

6. The learned counsel for the petitioner at this stage relies upon the judgments reported as ***Gull Arzoo vs. Station House Officer BZ, District Multan*** (2015 YLR 1765), ***Mirjam Aberras Lehdeaho vs. SHO, Police Station Chung, Lahore and others*** (2018 SCMR 427) and ***Nisar Muhammad and another vs. Sultan Zari*** (PLD 1997 Supreme Court 852) to state that despite pendency of matter before the Guardian Court, this Court can vary interim custody and handover the same to the mother directing the father to seek redress of his grievance before the learned Guardian Court. It is further claimed that as the respondent No.3 has snatched the passport and other documents of the petitioner as well as detenues, there is apprehension that he shall remove the minors from jurisdiction of the Guardian Court and take them outside Pakistan, therefore, custody in the meanwhile be handed over to the petitioner. Moreover, respondent No.3 is residing with the detenues in a hotel and does not have any regular residence and the observation of the learned Guardian Judge that paternal aunt of the detenues is looking after them is also incorrect for the reason that respondent No.3 does not have any sister i.e. paternal aunt of the detenues.

7. Perusal of case of ***Gull Arzoo*** (supra) shows that High Court handed over custody of the minor detenue to the mother during the pendency of guardianship petition as the minor was a suckling baby and could not live without the mother. In case of ***Mirjam Aberras Lehdeaho*** (supra), the

father by practicing deception and trickery had *mala-fidely* removed the children from custody of mother who alongwith her children was living abroad and in that scenario the court restored the temporary custody to the mother and in case of ***Nisar Muhammad*** (Supra), the court declared that mother had the custody of minor detenues before they were removed from her custody and restored the same to the mother. However, in the present case, the detenues were living with both the parents in Dubai and had reached Pakistan on 01.01.2025 and as per petitioner's claim from the Airport, the detenues were taken away by father and mother had not been allowed to join them whereas respondent No.3 through guardianship petition claims that she had left him and children from his residence, hence, it is not clear that whether she did not join her husband of her own free will or he has prevented her to join him and this Court is in constitutional jurisdiction although has jurisdiction to handover temporary custody to anyone of the parent by directing the other to seek remedy before the Guardian Court, yet as matter is already pending before the Guardian Court, this Court is not inclined to declare that the minors had been snatched forcibly by anyone of the parent from the other or custody of said parent as illegal and improper which requires determination of disputed facts not permissible in the Constitutional jurisdiction of this Court, lest it may prejudice rights of the parties before the Guardian Court where proceedings for custody of minors are pending, more so for the reason that habeas corpus proceedings by the very nature and purport are

summary in character and neither controversies are tried nor entire evidence is recorded under ordinary substantive and procedural laws under civil and criminal jurisdiction and such a jurisdiction being extraordinary in its very nature should be sparingly used because the plenary jurisdiction in the matter rests under other laws in other forums of special jurisdiction who should normally be allowed to exercise it in accordance with law. Reliance in this behalf may be placed on the judgments reported as ***Muhammad Rafique v. Muhammad Ghafoor*** (PLD 1972 S.C. 06) and ***PLD 1997 S.C. 852*** (Supra). Consequently this Court has refrain itself to pass any order relating to custody of minors. However, in the interest of justice, in order to further regulate the proceedings in the matter certain observations are recorded hereunder which the parties shall be bound to observe:

(**i**) The father shall not remove the detenues from the jurisdiction of the learned Guardian Court without its permission, and in case respondent No.3 or anybody else on his behalf tries to remove the detenues outside the Pakistan, the petitioner shall be at liberty to file an application or orally request the concerned authorities not to allow respondent No.3 to remove the detenues from Pakistan, upon which the said authorities would not allow the detenues to leave Pakistan without permission of the learned Guardian Court.

(**ii**) With the consent of parties, the date of hearing before the learned Guardian Court fixed for 17.01.2025 is changed to 04.01.2025 where the parties have been bound to appear at 10:00 a.m. and the said court shall requisition the file of the case and hear both the parties and proceed further in the matter in accordance with law. The

Guardian Court shall pass appropriate orders regarding temporary custody of the detenues on the merits of the case without being *prejudiced* by any observation recorded by this Court.

(**iii**) The petitioner seeks a direction against respondent No.3 to surrender passport of the detenues before this Court, however, as this Court is disposing of the matter for appearing before Guardian Court, the petitioner shall be at liberty to file an application for making aforementioned request before the learned Guardian Court which, if filed, shall pass appropriate orders on the same on its own merits in accordance with law.

(**iv**) The learned Law Officer shall convey this order to the concerned Guardian Court and authorities for information and compliance.

8. With these observations, this petition stands ***disposed of***.

(Muzamil Akhtar Shabir)
Judge

Naveed*

APPROVED FOR REPORTING: