Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT,
MULTAN BENCH, MULTAN

JUDICIAL DEPARTMENT

Crl. Misc. No.2897-H of 2026

Muhammad Mustafa Vs. District Police Officer, etc.

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.

13.05.2026. Mr. Mehmood ur Rehman Awan, Advocate for the petitioner.
Mr. Muhammad Ali Shahab, Deputy Prosecutor General and Miss Naheed Kanwal, Deputy District Public Prosecutor with Jamil, SI and Kinza Rani, the alleged detenue.

Muhammad Mustafa has filed a Habeas Corpus Petition under Section 491 of the Code of Criminal Procedure, 1898 seeking recovery of his minor daughter, Kinza Rani, from the alleged illegal custody of Respondents No.3 and 4, namely Dania Bibi alias Nasreen and Muzamil, (the "respondents"). The petitioner contends that his daughter cannot lawfully reside with the respondents who are unrelated to her, and as her natural guardian, he cannot be deprived of her custody.

2. On 28.04.2026, Rule Nisi was issued, returnable on 05.05.2026. On the said date, the minor/detenue appeared before the Court, identified the petitioner as her father, but expressed her unwillingness to live with him due to his second marriage and her discomfort with her stepmother. She stated that she was residing with her Khala and want to remain there. Considering that the detenue was underage, the Court held that her custody could not be entrusted to the respondents and ordered

that she be lodged in Dar-ul-Amaan until her custody is regulated in accordance with law.

3. Mr. Muhammad Ali Shahab, Deputy Prosecutor General was directed to assist the Court. On two occasions, he submitted arguments, asserting that the relevant law governing the matter is the Punjab Destitute and Neglected Children Act, 2004. He explained that under this Act, custody of such minor is regulated through the Special Protection Unit and a Court constituted under the Act, presided over by a Sessions Judge. Accordingly, he recommended that custody of the minor be handed over to the Child Protection Officer for proper regulation.

4. He further elaborated on the legal framework regarding the age of majority in Pakistan. Under various statutes, including the Majority Act, 1825, the Guardian and Wards Act, 1890, and Para 348 of Mohammadan Law, adulthood is recognized at 18 years. While the Child Marriage Restraint Act, 1929 had earlier prescribed 16 years as the minimum age for a female to contract marriage, the Punjab Child Marriage Restraint Ordinance, 2026 has now aligned the age of marriage with the age of majority, i.e., 18 years. He emphasized that the minor, being about 17 years of age, falls within the definition of a child under these laws. Referring to the provisions of the Punjab Destitute and Neglected Children Act, 2004, he explained the meaning of “destitute child” and the procedure for regulation of custody under the Act.

5. While elaborating on the meaning of “destitute,” the Learned Deputy Prosecutor General broadened the explanation to encompass economic, social, and human rights dimensions. He observed that destitution is not confined merely to poverty; rather, it signifies a

condition in which an individual is deprived of the essential means of living and is unable to sustain survival or dignity without external support. In this sense, destitution extends beyond financial hardship to include circumstances where legal, social, or governmental intervention becomes necessary to safeguard the fundamental rights and welfare of the person.

6. For comparative context, the Learned Deputy Prosecutor General also highlighted relevant provisions of the Constitution of India and associated statutory laws. He noted that under Indian constitutional jurisprudence, a person below the age of 18 years is regarded as a child. This position is reinforced by various Indian statutes, including the Majority Act, 1875, the Guardian and Wards Act, 1890 (as applicable in India), and the Juvenile Justice (Care and Protection of Children) Act, 2015, all of which consistently recognize 18 years as the threshold of majority. Furthermore, Article 21 of the Constitution of India, read with the Directive Principles of State Policy, underscores the protection of children's rights, while Article 15(3) empowers the State to make special provisions for children. Thus, both Pakistani and Indian legal frameworks converge on the principle that a person below 18 years of age is a minor and entitled to special protection in matters of custody, guardianship, and welfare.

7. He further reinforced the age of 18 years as the recognized threshold of adulthood by providing an international perspective. In the United Kingdom, statutes such as the Children Act 1989, the Children Act 2004, the Human Rights Act 1998, and the Education Act 1996 collectively affirm that individuals below 18 years are considered children. In the United States, the right to vote commences at 18 years; labor laws apply to

persons between 16 and 18 years; and juvenile justice laws govern those under 18. On the global plane, the United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, explicitly defines a child as "every human being below the age of 18 years." Thus, both domestic and international legal frameworks converge on the principle that 18 years marks the boundary between childhood and adulthood.

8. Later, Miss Naheed Kanwal, Deputy District Public Prosecutor also contributed her views regarding regulation of the minor's custody. She observed that the child is unhappy in her father's household and, being a victim of domestic violence, requires protection under the Punjab Protection of Women Against Violence Act, 2016. According to her, a complaint may be filed before the Family Court either by the minor herself, through another person, or by the Woman Protection Officer appointed under the Act. The Court, upon such complaint, is empowered to pass appropriate orders including production orders, residence rights, monetary relief, or interim protective measures. In support of her submission, she referred to Sections 5, 6, 7, 8, and 9 of the said Act.

9. Heard: relevant laws perused.

10. The Punjab Protection of Women Against Violence Act, 2016 is a victim-centric statute that may be invoked at the request of the aggrieved person. However, as mandated under Section 15 of the Act, such mobilization can only proceed with the explicit consent of the victim, which is reproduced;

> **Power to enter.–** (1) The District Women Protection Officer or a Women Protection Officer, at any time, enter in any place or house for the purpose of rescuing an aggrieved person but such officer or official shall not rescue the aggrieved person **without her consent**.
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> (Emphasis supplied)

Similarly, a complaint before the Court, specifically the Family Court as defined under Section 2(d) of the Act, may also be filed but only with the consent of the aggrieved person. Such proceedings are intended to regulate matters of shelter rather than custody. Consequently, the government is required to establish or designate a shelter home. In the present case, however, this provision is inapplicable, as the minor/victim is not seeking protection through Protection Officers appointed under the Act, but instead has chosen to reside at a place of her own preference.

11. In order to ascertain that minor/detenue is a 'destitute and neglected child' within the meaning of the Punjab Destitute and Neglected Children Act, 2004, I have examined the definition of 'destitute and neglected child' given in section 3 (k) of the Act which means;

> "a child who– (i) is found begging; or **(ii) is found without having any home or settled place of abode and without any ostensible means of subsistence**; or **(iii) has a parent or guardian who is unfit or incapacitated to exercise control over the child;** or (iv) lives in brothel or with a prostitute or frequently visits any place being used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life; or (v) is being or is likely to be abused or exploited for immoral or illegal purpose or unconscionable gain; or **(vi) is beyond the parental control;** or **(vii) has lost his parents or one of the parents and has no adequate source of income;** or (viii) is victim of an offence punishable under this Act or any other law for the time being in force and his parent or guardian is convicted or accused for the commission of such offence; or (ix) is at risk owing to disability or child labour; or (x) is imprisoned with the mother or is born in a jail; or (xi) is abandoned by the parents or guardian;"

In the present case, the minor appears to fall within categories (ii), (iii), (vi), and (vii) as outlined above, and could therefore be subject to proceedings under the relevant law. However, since she is 17 years of age, her custody cannot be regulated by the Court constituted

under the said Act, in view of Section 4 thereof, which provides as follows:

> **4. Initiation of proceedings about child under Part VII of this Act.–** (1) *Proceedings under Part VII of this Act can only be initiated about a child who has not attained the age of fifteen years* notwithstanding that during the course of such proceedings he may have attained the age of fifteen years. (2) In case of any dispute as to the age of a child, the Court shall decide the same in the first instance.
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> (Emphasis supplied)

PART VII of the Act, comprising Sections 24 to 33, addresses the rescue, custody, care, protection, and rehabilitation of destitute and neglected children. The learned Deputy Prosecutor General has placed considerable reliance on these provisions to seek regulation of the minor/detenue's custody. While the Child Protection and Welfare Bureau are empowered to assume custody of any destitute or neglected child and may subsequently discharge such child from a shelter home under Section 44 of the Act, the regulation of custody of a child above 15 years of age through the intervention of the concerned Court is not expressly contemplated within the Act.

12. In a truly cultured and civilized society, it is neither desirable nor acceptable to compel an unwilling grown up child to remain confined within the parental home against his or her will, particularly when such compulsion results in distress, fear, psychological harm, or even torture. The dignity of the individual must remain paramount. While certain religious traditions, including Islam, emphasize the importance of women maintaining the sanctity of the household, this principle cannot be interpreted as requiring them to sacrifice their health, safety, or very lives. The preservation of life and mental well-being is a higher moral and spiritual obligation.

13. Every citizen, regardless of gender or social standing, possesses the inherent right to liberty. This right is not a privilege granted by parents, peers, or local power figures such as sardars, but a fundamental entitlement recognized by both constitutional law and universal human rights frameworks. Any constraints upon such liberty must be examined and resolved through competent judicial forums, where impartiality and justice prevail, rather than through coercion or arbitrary decisions imposed by family or community elders. Moreover, the role of parents in a cultured society is not to enforce obedience through fear or force, but to nurture, guide, and support their children into independent adulthood. The transition from dependence to autonomy is a natural process, and attempts to suppress it often led to long-term psychological damage, fractured family relationships, and cycles of abuse. Respecting the autonomy of grown-up children is not only a legal necessity but also a moral imperative that strengthens the fabric of society.

14. It is also important to recognize that cultural norms must evolve in harmony with ethical principles and human rights. Traditions that once served communal cohesion should not be weaponized to justify oppression or denial of liberty. Islam itself, when understood in its holistic spirit, emphasizes compassion, justice, and the protection of human dignity. The Qur’an and Hadith repeatedly highlight the sanctity of life and the responsibility to avoid harm, which means that any interpretation demanding blind obedience at the cost of health or safety is a distortion of its true message.

15. Finally, the responsibility of the state and society is to ensure that individuals are not left vulnerable to familial or communal coercion. Legal systems, social

welfare institutions, and community organizations must work together to safeguard liberty, provide psychological support, and uphold justice. A society that values freedom, dignity, and compassion will not tolerate the detention of unwilling adults within homes, but will instead empower them to live meaningful lives in accordance with their conscience, faith, and aspirations.

16. Considering the above legal position, it is evident that a child who has already left the parental home, is above 15 years of age, and resides contentedly with another person of his or her choice, while adhering to moral and ethical standards, cannot have his or her custody disturbed by invoking the provisions of the Punjab Protection of Women Against Violence Act, 2016 or the Punjab Destitute and Neglected Children Act, 2004. Nevertheless, to safeguard against potential misuse, any interested party seeking custody may file a habeas petition for an interim report and information, and ultimately approach the learned Guardian Court, which is the competent forum to adjudicate matters concerning the welfare of the child.

17. In the present case, during the proceedings, the minor/detenue declined to accompany her father, expressing fear and distress due to the conduct of her stepmother, and instead voluntarily chose to reside with her Khala. Accordingly, she cannot be compelled either to live with her father or to be placed in a shelter home without her consent, unless the matter is adjudicated by the Guardian Court upon a petition filed by the father.

18. In view of the foregoing facts and the applicable law, this petition is ***disposed of*** with a direction to the Incharge Dar-ul-Amaan concerned to release Kinza Rani forthwith. Should the father/petitioner institute

proceedings before the learned Guardian Court, the matter shall be decided strictly in accordance with law.

(**MUHAMMAD AMJAD RAFIQ**)
JUDGE

Approved for reporting

Judge

Signed on 13.05.2026

*M. Umar**