

[Redacted]

Vs.

SHO etc.

Application No.

of 2020.

06.08.2020

Present: **petitioner in person with her learned counsel Mian Nasrullah Arshad Advocate.**

Fresh petition. Be registered.

Petitioner has filed this application under section 491/552 of Cr.P.C for recovery of her alleged detenue children namely [Redacted] aged 12-years, [Redacted] aged 9-years, [Redacted] aged 8-years, [Redacted] Mai 6/7 years from the custody of respondent No.2. SHO concerned is directed to produce the alleged detenues alongwith respondent No.2 before this Court on 08.8.2020.

Announced.

~~06.08.2020~~

Present: Petitioner [Redacted] with her learned counsel Mr. Tahir Ayub Khan Ahmdani, Advocate.

*[Signature]*  
Sessions Judge,  
D.G. Khan.

Muhammad Bilal ASI P.S Jhoke Uttra alongwith alleged minor detenues [Redacted] aged 12/13 years, [Redacted] aged 9-years, [Redacted] aged 8-years and [Redacted] aged 6/7 years.

Respondent No.2 Hussain Bakhsh in person.  
Mr. Tahir Ayub Ahmdani Advocate file power of attorney on behalf of respondent No.2.  
Learned ADPP for State.

[Redacted]

Petitioner [Redacted] has filed petition under section 491/552 Cr.P.C for recovery of her daughters namely [Redacted] aged 12-years, [Redacted] aged 9-years, [Redacted] aged 8-years and [Redacted] aged 6/7 years alleged detenues from the illegal custody of respondent No.2 [Redacted]. On the basis of that application, SHO concerned was directed to produce the alleged detenues alongwith respondent No.2 [Redacted] before this Court. [Redacted] ASI produced the aforesaid detenues alongwith respondent No.2 before the Court.

2. Learned counsel for the petitioner submits that respondent No.2 [Redacted] wants to marry [Redacted] aged about 12-years to some person. The said detenue is present before the Court and she

*[Handwritten notes and signatures in Urdu]*

apparently of the age of 12/13 years. The alleged deneue minors are old enough, therefore, I have sought preference of minors in my chamber in conducive atmosphere. The marriage of the parties was dissolved two years ago. It is also admitted fact that the petitioner has remarried but I asked from respondent whether he is going to marry [REDACTED] the respondent No.2 [REDACTED] submits that his going to marry his 12-years daughter to some person. This is also admitted by [REDACTED] minor. This is shocking and repulsive how a minor girl of 12 years of age can be given in marriage against law.

3. Under Section 17 sub-section (3) of the Guardians and Wards Act, the opinion of a minor has to be considered if the minor is old enough to form an intelligent preference. In case **2006 SCMR 301** it was held that desire of the minor to stay with her mother intends cannot be brushed aside. I have sought preference of minors in my chamber. All the minors except [REDACTED] was reluctant to go with her mother/petitioner [REDACTED]. First of all I will observe the wish of minors namely [REDACTED]. They all have stated that they want to live with their mother.

4. I am cognizant of the fact that I am dealing with an application under section 491 Cr.P.C with allegation that respondent will sale out the minor [REDACTED] to some one. The fact of marriage of [REDACTED] minor is admitted by the respondent No.2 [REDACTED] before this Court in a very candid manner. Minors have been produced before this Court. This court has to pass an order keeping in view the allegations levelled and facts/circumstances of the case. Some interim arrangements are to be made for interim custody of the minors/detenues. Even dealing with their interim custody the preference of the minors are to be given due weight if they are intelligent enough to form an opinion. It is their lives and they should have a say. They are the one who will suffer if some decision is made against their wishes. The United Nations Convention on the Rights of the Child is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The UN General Assembly adopted the Convention and opened it for signature on 20 November 1989. It came into force on 2<sup>nd</sup> September 1990, after it was ratified by the required number of nations including Pakistan. Currently 194 countries are party to it, including every member of the United Nations except Somalia, South Sudan and the United States. The Convention defines a child as any human being under the age of eighteen, unless

*Signature*

**██████████** **Vs.**

**SHO etc.**

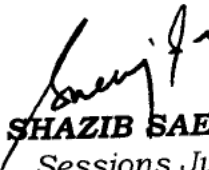
the age of majority is attained earlier under a state's own domestic legislation. Nations that ratify this convention are bound to it by international law. Compliance is monitored by the UN Committee on the Rights of the Child, which is composed of members from countries around the world.

5. Article 1 (Definition of the child): The Convention defines a 'child' as a person below the age of 18. The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis. Article 12 (Respect for the views of the child) is of vital importance which provides that when adult make decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity. Children's ability to form and express their opinions develop with age and most adults will naturally give the views of teenager's greater weight than those of preschooler, whether in family, legal or administrative decisions.

6. The minors are intelligent enough to form an opinion. I will go with the wishes of minors namely ██████████  
██████████ Therefore, I am of the view that Court has also to exercise parental jurisdiction.

So far as minor ██████████ is concerned, she is a girl of the age of about 12/13 years and she cannot be allowed to be given in marriage against law. This fact is also admitted by the respondent No.2 ██████████  
██████████ in the Court. Therefore, the custody of minors is handed over to petitioner ██████████ subject to any final determination to be made by Learned Guardian Judge, if any party avail that remedy. The application is allowed. File be consigned to record room after its due completion.

Announced:  
08.08.2020.

  
**SHAZIB SAEED,**  
Sessions Judge,  
D.G.Khan