

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No.610 of 2022

Ismail Khan

Versus

Umar Ali Khan and 07 others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	22.02.2022	Mr. Muhammad Waqas Malik, Advocate for the petitioner.

Through the instant writ petition, the petitioner has impugned order dated 15.02.2022, passed by learned Additional Sessions Judge-IX, West-Islamabad, whereby custody of Mst. Hameeda bibi / detenue has been handed over to respondent No.1 being her real father.

02. Succinctly stated facts of the case are that respondent No.1 filed a petition under section 491 Cr.P.C. in the Court of learned District & Sessions Judge, Islamabad, which was entrusted to Additional Sessions Judge-IX, West-Islamabad. It is alleged in the petition that Mst. Hameeda Bibi who is the real

daughter of respondent No.1 / Umar Ali Khan, has informed respondent No.1 that she has been illegally and unlawfully confined by the petitioner / Ismail Khan in a quarter at H-11 graveyard, who is uncle of husband of Mst. Hameeda bibi who has pronounced divorce upon her. Respondent No.2 / Mst. Hameeda bibi further told that the petitioner / Ismail Khan wanted to sell her to some other persons by showing him as father of Mst. Hameeda bibi.

03. Learned ASJ, Islamabad directed the bailiff of the Court to recover and produce the detainee Mst. Hameeda bibi in the Court. In compliance she was produced on the same day i.e. 15.2.2022, one other claimant namely Abdul Hakeem appeared and submitted that detainee / Mst. Hameeda bibi was her wife. It was brought to the knowledge of the Court that father of Salamat Rehman had allegedly sold the detainee to Abdul Hakeem.

04. The detainee / Mst. Hameeda Bibi did not show her willingness to stay with

Salamat Rehman and wanted to go with respondent No.1 / her real father. After getting signatures and thumb impressions of Mst. Hameeda bibi / detenue and respondent No.1 / Umar Ali Khan (father), custody of detenue was handed over to her father vide impugned order dated 15.02.2022, hence the instant writ petition.

05. Learned counsel for the petitioner, *inter alia*, contends that the impugned order is erroneous and not sustainable under the law; the petitioner being uncle of Salamat Rehman who is the husband of alleged detenue, is entitled for her custody, hence the impugned order is liable to be set-aside.

06. Arguments heard, record perused.

07. Mst. Hameeda Bibi / respondent No.2 is a married woman; she was allegedly in unlawful custody of the petitioner who is uncle of Salamat Rehman / ex-husband of Mst. Hameeda bibi.

08. Upon the direction of learned ASJ,

Islamabad, bailiff of the Court recovered Mst. Hameeda bibi from quarter of the petitioner situated at H-11 Graveyard and produced her in the Court. Mst. Hameeda bibi / detenue showed her willingness to stay with her father / respondent No.1 and her custody was handed over to her real father vide impugned order dated 15.02.2022.

09. The exceptional circumstances which could justify invoking the jurisdiction of High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, malafide, void or *coram non judice*. The impugned order is neither without jurisdiction, nor malafide, void or *coram non judice* so as to warrant interference in the Constitutional jurisdiction of this Court under Article 199 of the Constitution. Reliance is placed on cases reported as **2020 SCMR 2155, PLD 2006 SC 214, 1995 SCMR 1419 & 2020 SCMR 260.**

10. Learned counsel for the petitioner has failed to point out as to how the impugned order dated 15.02.2022, was the consequence of error of law or without jurisdiction or in excess of jurisdiction, hence the instant writ petition is not maintainable and the same is **dismissed in limine** with no order as to cost.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh