

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH MULTAN**  
JUDICIAL DEPARTMENT

**Crl. Misc. No.776--HB/2019**

Mst. Nazia Perveen

**VS.**

S.H.O., etc.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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**01.03.2019.**    **Mr. Abdul Khaliq Dogar, Advocate with petitioner.**  
                                 **Mr. Muhammad Siddique Dogar, Advocate        with**  
                                 **respondent No.2.**  
                                 **Mr. Adnan Latif, DDPP with Iqbal, SI.**

Minor detenues, namely, Moqaddas Bibi (aged about six years), Muhammad Arslan (aged about 7 years) and Muhammad Farhan (aged about 10 years) have been produced before the Court by respondent No.2 namely Muhammad Akhtar, their father.

2.            This petition has been filed by the petitioner regarding the alleged illegal and improper detention of her minor children named above by the respondent No.2. The petitioner is the real mother of the minors and keeping in view the ages of the minors the first right of *hazanat*, regarding custody of minors, lies with the petitioner. As per contents of this petition, the minors were snatched from the custody of the petitioner by the respondent No. 2 alongwith respondents No.3 to 4 on 25.01.2019. The petitioner has also appended her affidavit alongwith the present petition regarding the correctness of the contents of this petition. No counter affidavit has been filed by Muhammad Akhtar, respondent No.2 so as to challenge the contents of the affidavit. Marriage between the parties is not intact however there is nothing adverse against the petitioner to deprive her from the custody of her minor children. The Court has inquired from Muhammad Farhan (detenue) as to what he is doing who has replied that he works at a motorcycle shop and does not go to

the school. The said Muhammad Farhan (detenue) is being deprived of motherly love as well as education by his father who has got him employed at a motorcycle workshop. The petitioner is living with her parents. Learned counsel for the respondent No.2 has submitted that appropriate proceedings were initiated before the learned Guardian court and as the matter is pending before the learned Guardian court, therefore, the question regarding custody and welfare of minors should be left to be determined by the court of competent jurisdiction after a fair trial and evidentiary hearing to enable the parties to put all requisite material before the court. He further submitted that an informed decision can be made by the learned Guardian court regarding the welfare and custody of the minors. It is true that a Guardian court is the final arbitrator to adjudicate upon the question of custody of a child but this does not mean that where a parent is holding custody of a minor lawfully and is deprived of such custody, such parent cannot seek remedy to regain the custody while the matter is *sub judice* before a Guardian court. This Court, in exercise of its power under Section 491 Cr.P.C., has to exercise parental jurisdiction and is not precluded in any circumstance, from giving due consideration to the welfare of the minors and to ensure that no harm or damage comes to them physically or emotionally by reason of breakdown of family tie between the parents. Reliance is placed on the case of Mirjam Aberras Lehdeaho v. S.H.O., Police Station Chung, Lahore and others (2018 SCMR 427).

3. In light of the above discussion, the instant petition is allowed and the custody of minors namely , Moqaddas Bibi (aged about six years), Muhammad Arslan (aged about 7 years) and Muhammad Farhan (aged about 10 years), is ordered to be handed over to the petitioner. It has already been brought in the notice of the court that the application under section 25 of the Guardian & Wards Act, 1890 is pending before the learned

Judge Guardian Court, so it is further directed that the petitioner shall facilitate the respondent No.2 to meet with the minor children and shall produce the minors before learned Judge Guardian Court as and when directed by the said court. It is also made clear that although respondent No.2 is permitted to meet his minor children, however, he will not take them out with him from the premises of the Guardian Court concerned. It is also made clear that the petition pending before the court of the learned Judge Guardian Court shall be decided on its own merits without being influenced by any observation made in this order.

***(Sadiq Mahmud Khurram)***

***JUDGE***

*Raheel*

Approved for Reporting

Judge.