

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-2787 / 2022

Date _____ Order with signature of Judge _____

HEARING,

- 1) For orders on office objection.
- 2) For hearing of main case.

08.06.2022.

Mr. Altaf Hussain Khoso, Advocate along with Petitioner,
Mr. Salman Talibuddin, Advocate General Sindh,
Mr. Faiz Hussain Shah, Prosecutor General Sindh,
Mr. Ali Haider Saleem, Additional Prosecutor General,
Mr. Zeeshan Adhi, Additional Prosecutor General,
Mr. Khursheed Javed, Deputy Attorney General,
Mr. Sandeep Malani, Assistant Advocate General,
Ms. Shehnaz Sehar, Advocate for Panah Shelter,
DIG Karim Khan DIG CIA,
SSP Zubair SSP AVCC,
DSP Mehdi, DSP West II,
DSP Raza Mian DSP West,
I/O ASP Shoukat Ali Shahani,
Inspector Hina (SHO)
SI Wazir Ali,
Minor / Abductee Dua E Zahra Kazmi produced in custody.

On 06.06.2022 after production of alleged abductee Dua E Zahra Kazmi we had passed the following order:-

1) Granted

Matter has been taken up on permission at the request of learned Advocate General Sindh, though it is already fixed on 10.6.2022 as date by Court. It appears that in this Petition various orders have been passed on many dates including order dated 03.06.2022, whereby, time and again directions have been given to the Respondents to produce the alleged minor / abductee namely Dua E Zahra Kazmi. Today, she has been produced in Court and her statement has been recorded on oath in the following terms -

"My age is about 17/18 years. I was not abducted by any person. Syed Mehdi Ali Kazmi is my father who has lodged FIR in Crime No. 159/2002. My father has lodged false FIR as I am being aged about 17/18 years. Sindh Police has recovered me from Chishtian. Now I intend to go with my husband Zaheer Ahmed."

Learned Advocate General submits that insofar as the Government of Sindh is concerned, since the marriage was solemnized outside the Province, no FIR has been registered under The Sindh Child Marriages Restraint Act, 2013, whereas, an FIR has been registered on the complaint of the Petitioner bearing No. 159/2022 under Section 364-A PPC and under Section 3(1) of the Prevention of Trafficking in Persons Act, 2018. However, in view of the facts and circumstances of the case

seniority of ASI and SI is maintained by the Central Police Unit are provided in Executive Unit are provided in order dated 29.9.2016 passed in Civil Petition No.494 & 506/2005 which for the review petitioners that if upon view they have any individual grievance as

and the statement of the alleged abductee, even to that extent no case is apparently made out. He further submits that the abductee has been produced with the cooperation of Punjab Police, whereas, Writ Petition No. 30275/2022 (Noor Munir etc. V. I.G. Police etc.) filed before the Lahore High Court is pending and in compliance of the Court's order the abductee Dua Zehra is to be produced before the said Court on 10.06.2022.

On the other hand, Petitioner's Counsel present along with the Petitioner submits that the Petitioner was born on 27.04.2008 and she is an underage girl; hence, an offence under Section 364A PPC is made out, and in support he has referred to her Birth Registration Certificate and the copy of Passport available on record.

From perusal of the record and the statement of the alleged abductee recorded on oath today before us, prima facie it appears that insofar as her alleged abduction by Respondent No.6 (Zaheer Ahmed) is concerned, to that effect no case is made out. However, as an abundant precaution we are of the view that before any final order could be passed as to the custody of Dua E Zahra Kazmi, let her Ossification Test / Medical Examination is conducted to determine her age. Therefore, the Investigating Officer of the FIR i.e. ASP Shoukat Ali Shahani present in Court is directed to immediately arrange such test / medical examination. Till then, the alleged abductee Dua E Zahra Kazmi shall be sent to Panah Shelter Home today, with directions to produce her on the next date. Let such exercise be carried out within two days' time and the matter be re-listed in Court on 08.06.2022 at 11:30 A.M. Office to issue Copy to all concerned."

Pursuant to the above order the I.O. has filed his report along with Age Certificate from the office of Police Surgeon Karachi which states that as per the opinion of the doctors and the Department of Radiology, Civil Hospital, Karachi, the bone age of the alleged minor / abductee namely Dua E Zahra Kazmi is between 16 to 17 years. The same is taken on record.

Apparently, in view of the above, and the order passed on 6.6.2022 this Petition has served its purpose as it was only to the extent of the whereabouts of the alleged minor / abductee Dua E Zahra Kazmi who has already been produced on the last date of gearing and has stated before us on oath that she was neither abducted nor kidnapped; but has entered into a contract of marriage with Respondent No. 6 namely, Zaheer Ahmed.

Today we have also heard the petitioner along with his Counsel. As to the allegation that Dua E Zahra Kazmi is a minor and is under 14 years of age by placing reliance on supporting documents filed along with this petition as against the Ossification test / Age Certificate placed before us today, it would suffice to observe that in our Constitutional jurisdiction under Article 199 of the Constitution we cannot determine such factual disputes as it may affect and prejudice the interest of any of the parties, whereas, the Hon'ble Supreme Court after relying upon various pronouncement of the Federal Shariat Court¹, in somewhat similar facts

¹ Muhammad Imtiaz v The State (PLD 1981 FSC 308); Arif Hussain v The State (PLD 1982 FSC 42); Muhammad Ramzan v The State (PLD 1984 FSC 93); Muhammad Yakoob v The State (1985 Pcr.L.J 1064)

In the case reported as Hafiz Abdul Waheed v Mrs. Asma Jehangir (PLD 2004 SC 219) has been pleased to observe that it is inappropriate and undesirable, if not illegal for the High Court to determine the fate of the couple by adjudicating the validity of the marriage on the touchstone of Injunctions of Islam, in proceedings under Section 491 Cr.P.C., which are in fact akin to the provisions of Article 199(1)(b)(i) of the Constitution of Pakistan. Hence, we must not determine the veracity of the allegation(s) and must not dilate upon the same any further. For that, the aggrieved parties, if any, are always at liberty to contest and agitate the same before the competent Court seized with the matter / FIR already lodged by the petitioner.

However, the concerned I/O is directed to file his report section 173 Cr.P.C., before the trial Court, and if he has already filed any such report, he may file a supplementary challan along with the Age Certificate and the statement of Dua E Zahra Kazmi, recorded before this Court, whereafter, the trial Court seized with the matter shall proceed in accordance with law.

As to the production of Dua E Zahra Kazmi before the learned Lahore High Court as informed by the learned AAG, the Sindh Police is at liberty to produce her, if so required, and we after production and statement of the alleged abductee Dua E Zahra Kazmi are not inclined to issue any further directions to that effect.

Accordingly, this Petition stands disposed of, whereas, the alleged abductee / minor Dua E Zahra Kazmi, pursuant to her statement on Oath and Age Certificate is set at liberty to decide as to with whom she intends to reside and go along.

Let copy of this order be issued to all concerned.

Arshad/

the recommendation of Range DCPs
 for promotion to the rank of Inspectors,
 who have qualified Upper School
 Certificate (CPO) on centralized basis,
 seniority of the Constable and Head
 Constable in Police is maintained by the Central
 Inspector of the Executive Unit are provided in
 the report rendered by the Honorable Supreme
 Court and Order dated 29.9.2016 passed in
 Civil Petition No.494 & 506/2005 which
 is for the review petitioners that if upon
 review they have any individual grievance or