**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**W.P. NO. 2707 OF 2025**

**MUHAMMAD ARSHAD**

**VS**

**LEARNED ADDITIONAL SESSIONS JUDGE, ISLAMABAD (EAST), ETC.**

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| **Petitioner by** | **:** | **Mr. Abdul Jabbar Awan, Advocate.** |
| **Respondents by** | **:** | **Mr. Arif Ali Satti Advocate, for Respondents No. 3 and 5.**<br>**Ms. Ramsha Khalid, State Counsel.**<br>**Mr. Shabbir, S.I Sowan Circle, and Ms. Natasha Constable.** |
| **Date of hearing** | **:** | **15.07.2025** |

**MUHAMMAD AZAM KHAN, J.**

**1.** Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"), Muhammad Arshad **("Petitioner")** has challenged the Order dated 12.06.2025 **("Impugned Order")** passed by the learned Duty Additional Sessions Judge, Islamabad-East **("Respondent No.1**") whereby the petition u/s 491 Cr.P.C**.** for the recovery of the detenue Umaima**,** daughter of the Petitioner, has been dismissed.

**2.** The brief facts of the case, as per the contents of the petition, are that the Petitioner's daughter, namely Umaima**,** born on 27.03.2010 (aged about 15 years**)**, was abducted by Asad Sarfaraz ("Respondent No. 3") with the help of Respondents No. 4 & 5 on 24.04.2025. The Petitioner moved an application to the S.H.O., P.S. Sihala ("Respondent No. 2") for help in recovering the abductee and handing over the abductee to him, and also moved an application for registration of an F.I.R., but to no avail**.** The Petitioner has alleged that Respondent No. 3 abducted his daughter from Islamabad and contracted marriage at the District Court, Rawalpindi, by falsely mentioning the address of the minor as "Mohallah Iqbalabad, Chinyot" in the Nikahnama

and misrepresenting the age of the Petitioner's daughter as 18 years, although she was only 15 years old**.** The Petitioner also filed a petition u/s 491 Cr.P.C**.** before the learned Sessions Judge, Islamabad-East, which has been dismissed vide the Impugned Order dated 12.06.2025. Being aggrieved thereby, the Petitioner has filed the instant petition.

**3.** The learned counsel for the Petitioner has argued that the learned Additional Sessions Judge observed during the arguments that since the minor was of 15 years of age, she was not *sui juris* and that the accused party committed the offence of zina**,** yet dismissed the petition without applying a judicious mind; that the learned Court ignored the enactment of the Child Marriage Restraint Act, 2025**,** which applies to the Islamabad Capital Territory; that the minor cannot contract marriage without the permission of her *Wali*/Guardian; and that if the minor is not willing to go with her parents, she should be sent to a Darul Aman. Lastly, the learned counsel prayed for the acceptance of the instant petition, the setting aside of the Impugned Order, and the handing over of the custody of Umaima to the Petitioner, being her real father.

**4.** On the other hand, the learned counsel for Respondents No. 3 & 5 argued that the Impugned Order is well-reasoned and does not call for any interference; that the Nikkah was contracted between Umaima and Asad Sarfraz/Respondent No. 3; and that the alleged detenue prefers to stay with her husband. Lastly, the learned counsel prayed for the dismissal of the instant petition.

**5.** I have heard the learned counsel for the parties and perused the available record with their able assistance.

**6.** The Petitioner, is the father of Mst. Umaima and has filed the instant Writ Petition, being aggrieved by the Impugned Order, whereby his application u/s 491 Cr.P.C**.** was dismissed on the ground that Umaima solemnized her Nikkah with Asad Sarfraz/Respondent No. 3 on 25.04.2025 and, as per her statement, she wished to stay with her husband and refused to go with the Petitioner. The Petitioner's claim that his daughter was abducted was not substantiated. He has produced Umaima's Birth Certificate and educational certificates, which confirm that her date of birth is 27.03.2010**,** making her under 16 at the time of the alleged

Nikkah. However, the Petitioner in his application filed u/s 491 Cr.P.C alleged abduction, which is not proved from the actual situation revealed before the learned Additional Sessions Judge while seized with the matter. Umaima's statement before the Court established that she was not abducted but contracted a valid Nikkah voluntarily with Asad Sarfraz / Respondent No. 3 on 25.04.2025 in Rawalpindi. Thus, the Petitioner's allegations were false. The validity of a minor's marriage is not presently before this Court, and ruling on this issue could prejudice the pending trial in F.I.R. No. 609/2025 (registered under Section 365-B PPC at P.S. Humak, Islamabad), which must be adjudicated on its merits.

**7.** Mst. Umaima was produced before this Court, who at present is kept in the Crisis Centre Islamabad, and she categorically stated that she had contracted Nikkah with Asad Sarfraz/Respondent No. 3 without coercion and no one has abducted/kidnapped her. She further affirmed her desire to reside with her husband.

**8.** This Court relies on the judgment of the august Supreme Court of Pakistan passed in *Mst. Bakhshi v. Bashir Ahmad* (**PLD 1970 Supreme Court 323),** relevant portion of which is reproduced as under: -

> *"It is abundantly clear from the statement of the girl that she, of her free will, married Bashir and wants to live with him, but is unwilling to go back to her mother or to her mother's second husband Ibrahim.*
>
> *As there is no dispute about the date of birth of Mst. Shamim she had definitely attained than 15 years of age before her marriage with Bashir Ahmad on the 17th of September 1969.* ***According to the Muslim Personal law, a girl professing Islam who has attained the age of 15 years shall be presumed to have attained puberty****."*

Similarly, reliance is also placed on *Mauj Ali v. Safdar Hussain* **(1970 SCMR 437)**, the relevant portion of which is reproduced as under:

> *"It is not disputed that Mst. Musarrat has attained the age of puberty and she had married with respondent No.1 of her own free will. Such a marriage is valid according to Muhammadan Law. It was urged that such marriage is invalid under the Child Marriage Restraint Act and, therefore, it should not have been recognized by the High Court. This contention also has no force.* ***Since the marriage is valid under the Muhammadan Law, respondent No.1 is the guardian of Mst. Musarrat and the High Court was perfectly justified in allowing her to go with her husband.*** *We are satisfied that substantial justice has been done in*

> *this case. We, therefore, do not consider this as a fit case to interfere in our special jurisdiction. The petition is dismissed."*

**9.** The Nikkah was solemnized in Rawalpindi**,** and thus the Petitioner's reliance on the Islamabad Capital Territory Child Marriage Restraint Act, 2025 is misplaced, as the Act applies only to ICT and cannot be extended to jurisdiction of Rawalpindi which comes under the province of Punjab.

**10.** For the foregoing reasons, the instant Writ Petition is **dismissed**, as it lacks merit.

**(MUHAMMAD AZAM KHAN)**
**JUDGE**

***//Sajid//****