

HIGH COURT OF AZAD JAMMU & KASHMIR

Petition No. 470/2025.
Date of Institution 22.11.2025.
Date of decision 26.11.2025.

Mohammad Nazeer s/o Barkat Ullah r/o Ward No.19 Mohallah Mohri
Gojra Tehsil & District, Azad Jammu & Kashmir.

Petitioner

VERSUS

1. Senior Superintendent of Police District Muzaffarabad, Azad Jammu & Kashmir;
2. SHO Police Station Saddar Muzaffarabad, Azad Jammu & Kashmir;
3. Gulfraz Mughal s/o Abdul Rasheed;
4. Abdul Rasheed s/o Mohammad Maskeen r/o Ward No.24 Mohallah Mohri Gojra Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Respondents

PETITION U/S 491 CR.P.C

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Raja Aftab Ahmed, Advocate for the Petitioner.
Mohammad Pervez Mughal/Jabir Raza Advocates for Rozeena Nazir, alleged detainee.

JUDGMENT:

Once a marriage is “De jure” complete i.e. having satisfied all wedified legal requirements, it is immutable by public opinion. Elopement, therefore, cannot whittle down its legal force under the doctrine of factum valet ¹.

Although morally elopement is hardly approved in the social fabric of our society but should be accepted as a bitter pill where all codal and legal formalities are fulfilled towards contracting marriage.

¹. A Latin legal phrase which translates to: “what ought not to be done becomes valid when done”. This doctrine underscores the de facto reality over minor de jure norms especially if declaring the former void causes greater harm or inequality.

2. This application under Section 491, Cr.P.C has been filed by one Mohammad Nazir, the father of the alleged detainee to produce his daughter before the Court.

3. After filing the supra application, SSP Muzaffarabad vide order dated 24.11.2025 was directed to produce the alleged detainee "Rozeena Bibi d/o Mohammad Nazeer" before the Court positively on 26.11.2025, hence, after recovering the corpus of the alleged detainee, SHO Police Station Saddar Naveed-ul-Hassan produced the detainee before the Court today. The alleged detainee disclosed that she had entered into a valid Nikkah with one Gulfraz Mughal who is also her real cousin as well. She claimed to be a sui-juris lady. Mr. Pervez Mughal, the counsel for alleged detainee produced a record of NADRA and also stated that the alleged detainee has attained the age of liberty i.e. sixteen years and eleven months old, being one-month shy of reaching the age of seventeen.

4. On Court's query, the alleged detainee categorically stated that she contracted marriage with Gulfraz Mughal (who is her real cousin) with her free and sweet will. She further stated that the marriage was not an elopement but a formally arranged ceremony. Furthermore, the elders of Gulfraz Mughal's family participated in the marriage which negates any suggestion of elopement or abduction. It transpires from the record and statement of the alleged detainee that it is not a case of abduction or elopement and as per the law of the land, a sui-juris girl is at liberty to enter into the marriage with a person of her own choice, however, the only impediment in this regard is the age limit.

5. Post 13th Amendment ², Principles of policy recognize the right of the families qua their protection ³ thus, protection provided in the Constitution should also be taken into consideration and must be read with fundamental right No.1 of the Constitution as well as Principles of policy aid a purposive interpretation of Fundamental Rights in the Constitutional framework in which they are found ⁴. In the social fabric of our society, although elopement is not a bitter pill to swallow and is normally not accepted, leaving aside this aspect of the matter, we must consider the outcome and aftermath of such marriages. We have to go by the law of the land, as law permits a sui-juris girl to enter into marriage with a person of her own choice. Therefore, it cannot be questioned by anyone.

6. Furthermore, it should be noted that FIR in this regard has already been chalked out at the relevant Police Station and the police is currently investigating the incident. The petitioner then filed this instant petition, circumventing the ongoing police investigation. The alleged detainee and Gulfraz Mughal accused nominated in the FIR have already obtained pre-arrest bail from the Court of competent jurisdiction Muzaffarabad, where, the next date of hearing is fixed for 27.11.2025. Given that the FIR has already been chalked out pertaining to the matter and the Police is investigating the matter by all angles and the competent Court of jurisdiction, by entertaining the pre-arrest bail application, has already taken cognizance of the matter. Furthermore, the District Criminal Court/Sessions Court is also equipped with the powers to pass/issue any appropriate order.

². Constitution (thirteenth Amendment) Act, 2018.

³. Article 3-G of the AJ&K Interim Constitution, 1974.

⁴. Mohammad Ahmed Pansota Vs. Federation of Pakistan (PLD 2020 Lahore 229).

7. The alleged detainee was asked whether she is willing to go with her father or husband, she positively replied that she will go with her husband and categorically denied to go with her father present in the Court. As the alleged detainee and the accused Gulfraz Mughal are already on pre-arrest bail, so, let the matter be decided by the relevant fora.

8. **Seemingly the alleged detainee is a grown up girl and FIR in the relevant police station has been chalked out and in furtherance of the same, investigation is underway. Categorical stance of the alleged detainee is that neither she was in any kind of confinement nor under any restraint, she added that she is happily living with her husband (present in the Court). They decided to elope because their families did not approve of their love.**

9. It would an ironic state of affairs that while taking up/considering a Habeas Corpus petition under section 491, Cr.P.C, the Court finds the alleged detainee is not under any sort of confinement, that too, with a stance of contracting marriage in accordance with law which is supported by registered documents, particularly Nikkah Nama, even than the alleged detainee be ordered to be lodged at a Dar-ul-Aman against the wishes of the alleged detainee, which would be wholly unjustifiable and contradictory to the legal findings.

10. By any way, Habeas Corpus proceedings are meant to secure release of a person from an alleged or improper custody or confinement

⁵. It is useful to reproduce the verbatim of Section 491, Cr.PC as under:-

491. Power to issue directions of the nature of habeas corpus.

(1) Any High Court may, whenever it thinks fit, direct;

⁵. Sadia Aziz Vs. DPO & others (PLD 2025 Lahore 540).

- (a) that a person within the limits of its [appellate criminal jurisdiction] be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in a public or private custody within such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court' martial or any Commissioners for trial or to be examined touching any matter pending before such Court martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial, and
- (f) that the body of a defendant within such limits be brought in on that Sheriff's return of Cepi Corpus to a writ of attachment.

(1A). The High Court may, by general or special order published in the official Gazette, direct that all or any of its powers specified in clauses (a) and (b) of sub-section (1) shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by...

(a) a Sessions Judge; or

(b) an Additional Sessions Judge, within the territorial limits of a Sessions Division]

(2) [The High Court] may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under any law providing for preventive detention.

11. The registered Nikkah Nama is on record. At present, the alleged detinue is living with her alleged husband (present in the Court) who is her real cousin as well. She refuses to live in Dar-ul-Aman or to return to her father's custody. Ex-facie, a presumption of legitimacy arises in favour of the validity of Nikkah rather contra and in case of conflict between any codal law and the Injunctions of Islam pertaining to the validity of marriage, all other man-made laws must yield to the Injunctions of Islam. If the marriage is held valid in Shariah, it shall be held valid for all practical purposes, unless the Nikkah is successfully challenged and declared invalid by the competent Court of jurisdiction.

(Emphasis Supplied.)

As a corollary, the petition at hand merits no further consideration and is, therefore, **consigned to record**.

Announced.

Muzaffarabad.

26.11.2025 (Saleem)

JUDGE

[Approved for Reporting]

JUDGE