

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM  
&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(Crl.).No. 227 of 2015 (S)  
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PETITIONER(S):  
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1. BASHEER @MOHAMMED BASHEER AGED 46 YEARS  
S/O. SAYED ALI, MOOCHICKAL HOUSE, AKALUR POST  
OTTAPALAM TALUK.
2. NABEESA AGED 40 YEARS  
W/O. MOHAMMED BASHEER, MOCHICKAL HOUSE, AKALUR POST  
OTTAPALAM TALUK.

BY ADV. SRI.R.SREEHARI

RESPONDENT(S):  
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1. STATE OF KERALA  
REPRESENTED BY THE HOME SECRETARY, SECRETARIAT  
THIRUVANANTHAPURAM - 695 001.
2. DIRECTOR GENERAL OF POLICE  
POLICE HEAD QUARTERS, KERALA  
THIRUVANANTHAPURAM - 695 011.
3. DISTRICT POLICE CHIEF  
OFFICE OF THE DISTRICT POLICE CHIEF  
PALAKKAD - 678 011.
4. CIRCLE INSPECTOR OF POLICE  
OTTAPALAM - 679 101.
5. SUB INSPECTOR OF POLICE  
OTTAPALAM POLICE STATION, OTTAPALAM - 679 101.
6. SAJITH  
S/O. VELAYUDHAN, KALLINGAL ASARIKUNNATH, PARAPPALAM  
AKALUR POST, OTTAPALAM TALUK - 679 302.

7. VELAYUDHAN

FATHER'S NAME AND AGE NOT KNOWN TO THE PETITIONERS  
KALLINGAL ASARIKUNNATH, PARAPALLAM, AKALUR POST  
OTTAPALAM TALUK - 679 302.

R1-R5 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION  
SRI. TOM JOSE PADINJAREKARA

R6-R7 BY ADV. SRI.C.K.MOHANAN  
R BY GOVERNMENT PLEADER SRI.SHIBU JOSEPH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON  
04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS  
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P1 - PHOTOCOPY OF ACKNOWLEDGMENT/RESIDENT COPY ISSUED BY UNIQUE IDENTIFICATION AUTHORITY OF INDIA EVIDENCING THE DATE OF BIRTH OF THE PETITIONERS DAUGHTER.

P2 - PHOTOCOPY OF THE COMPLAINT DT. 05.05.15 FILED BEFORE THE 5TH RESPONDENT.

EXT. P3. PHOTO COPY OF BIRTH CERTIFICATE OF SALMA ISSUED BY LAKKIDI PERUR GRAMA PANCHAYAT DT. 28.7.1998.

RESPONDENT(S)' EXHIBITS  
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EXT. R4(A) TRUE COPY OF THE STATEMENT GIVEN BY SUHARA ISHAK DT. 14.7.2015.

EXT. R4(B) TRUE COPY OF THE RELEVANT PAGE OF THE REGISTER OF BIRTHS AND DEATHS MAINTAINED BY LAKIDI PERUR GRAMA PANCHAYAT FOR THE YEAR 1998.

EXT. R4(C) TRUE COPY OF THE STATEMENT GIVEN BY MUHAMMED BASHEER DT. 14.7.2015.

EXT. R4(D) TRUE COPY OF THE ELECTION ID CARD ISSUED BY THE ELECTION COMMISSION OF INDIA DT. 13.11.1998 IN FAVOUR OF NAPHEESA.

EXT. R4(E) TRUE COPY OF THE SAID ELECTION ID CARD ISSUED BY THE ELECTION COMMISSION OF INDIA DT. 13.11.1998.

EXT. R6(A) TRUE COPY OF THE SSLC CERTIFICATE OF SALMA A.B.

EXT. R6(B) TRUE COPY OF THE BIRTH CERTIFICATE OF ABDUL RAHMAN ISSUED BY THE LAKKIDI PERUR GRAMA PANCHAYAT DT. 25.7.2015.

TRUE COPY

PS TO JUDGE

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

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WP(CR) No. 227 of 2015  
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Dated this the 4th day of September, 2015

JUDGMENT

Abdul Rehim,J.

Parents of the alleged detenu, Miss.Salma are the petitioners herein. They are approaching this court seeking a writ of habeas corpus for directing production of the corpus of the alleged detenu and to release her at liberty.

2. Allegation is that the petitioners daughter is missing from their house since 4.5.2015 onwards and on enquiry they came to know that she had gone along with respondents 6 and 7. It is stated that the 6<sup>th</sup> respondent is a habitual offender and many cases are pending against him. Hence an apprehension is raised that the life of the alleged detenu is in danger. It is also alleged that, despite submission of Ext.P2 complaint before the 5<sup>th</sup> respondent, no effective action was taken by the police to trace out the missing girl. Based on the specific allegation that the petitioners daughter is illegally detained by respondents 6

and 7 against her free will, this writ petition is filed.

3. When the case was posted for consideration after issuing notice to respondents 6 and 7, on 15.6.2015 it was informed to this court by the learned Government Pleader appearing on behalf of respondents 1 to 5 that the alleged detenu was traced out in the case already registered with respect to her missing and that she was produced before the Judicial First Class Magistrate Court, Ottappalam on 4.6.2015. It is stated that the learned Magistrate had let the alleged detenu at liberty to go in accordance with her free will and she had gone along with the 6<sup>th</sup> respondent. But the petitioners disputed her attainment of majority, on the basis that her date of birth is 22.7.1998. It was also contended that there was no valid marriage established between the alleged detenu and the 6<sup>th</sup> respondent. Under such circumstance this court directed the 4<sup>th</sup> respondent to cause production of the alleged detenu.

4. The alleged detenu was produced before this court on 19.6.2015. Respondents 6 and 7 entered appearance through counsel and produced documents to show that the alleged detenu had converted to Hindu religion by undergoing requisite rites and

ceremonies conducted at 'Akhila Bharatha Ayyappa Seva Sangham'. Document was also produced to show that a marriage between the alleged detenu and the 6<sup>th</sup> respondent was conducted on the the same day under religious rites. School leaving certificate of the alleged detenu was produced, which would indicate her date of birth as 22.5.1997. But the extract of birth certificate produced by the petitioners, which is issued from Lakkidi -Perur Grama Panchayat, would indicate that her date of birth is 22.7.1998. The alleged detenu said that her date of birth 22.5.1997 as entered in the school register. She had also conceded about the conversion of religion and the marriage solemnised. She expressed her desire to go along with the 6<sup>th</sup> respondent. Since this court felt that, question regarding validity of the marriage will depend upon the attainment of majority by the alleged detenu, it was not proper to send the alleged detenu along with the 6<sup>th</sup> respondent. Therefore the alleged detenu was directed to be admitted in a Hostel at Ernakulam, under orders of this court.

5. On 7.7.2015 when the case was considered further, we have evaluated the two documents available with respect to proof

of the date of birth of the alleged detenu. Since it was felt that an enquiry with respect to genuineness of the extract of the birth register issued from the Local authority is required, we directed the 4<sup>th</sup> respondent to conduct a personal enquiry. It was directed to conduct necessary enquiry after inspection of the Registers kept in the office of the Local Authority and to make an enquiry regarding genuineness and correctness of the entries contained therein. Based on such direction, the 4<sup>th</sup> respondent had filed detailed statement before this court which would indicate that a detailed enquiry was conducted by collecting all relevant materials and it was disclosed that the extract of birth certificate issued from Lakkidi -Perur Grama Panchayat is genuine.

6. On 18.8.2015 when the case was taken up for further consideration, the alleged detenu was produced. She reiterated her adamant stand to go along with the 6<sup>th</sup> respondent. Learned counsel appearing for the 6<sup>th</sup> respondent submitted that she had already converted to Hindu religion and a marriage was already solemnised in a temple. The 6<sup>th</sup> respondent also filed IA.11435/2015 praying for a direction to subject the alleged detenu to medical examination in order to ascertain as to

whether she had attained majority or not. Under such circumstance we directed the Superintendent, Government Medical College Hospital , Thrissur to conduct 'Ossification Test' in order to ascertain the exact age of the alleged detenu, through scientific methods. The alleged detenu was directed to be re-admitted in the Hostel and the 4<sup>th</sup> respondent was directed to make necessary arrangements to take her to the said Hospital for undergoing the test.

7. Today when the case is taken up, learned Government Pleader had produced the age certificate, dt. 26.8.2015, issued by the Assistant Professor and Assistant Police Surgeon in the Department of Forensic Medicine at Government Medical College, Thrissur. It would indicate that various medical examinations conducted on the alleged detenu like; Physical, Dental and Radiological, findings are arrived by the experts to the effect that the alleged detenu is aged above 18 years and below 19 years,

8. On the basis of the expert opinion regarding the age of the alleged detenu, this court is convinced that the dispute with respect to discrepancy in the date of birth in the available documents can be resolved by treating the alleged detenu as a

person attained majority. Learned counsel appearing for the 6<sup>th</sup> respondent had produced document to show that the alleged detenu has been converted to Hindu Religion before the 'Kanjiramattom Sree Mahadeva Temple', Thodupuzha and steps for approval of the conversion from 'Akhila Bharatha Ayyappa Seva Sangham', Thiruvananthapuram has already been taken. A certificate of marriage issued from "Sree Mahadeva Temple" on 1.6.2015 would indicate that a customary marriage under religious rites and ceremonies was performed between the alleged detenu and the 6<sup>th</sup> respondent, on 31.5.2015. It is also mentioned that steps have been taken to register the marriage before the Marriage Registering Authority under the Kerala Registration of Marriages (Common) Rules 2008.

9. Under the above mentioned circumstances, this court is of the opinion that a customary marriage valid under the personal law prevailing in the Hindu religion has been established between the parties. Hence this writ petition is hereby disposed of by holding that the alleged detenu is not under any illegal confinement at present. She is set at liberty to live together with the 6<sup>th</sup> respondent as husband and wife, on the basis of the

valid marriage established, at any place of their own choice.

10. Learned counsel for the petitioners made an appeal to this court to direct the alleged detenu and the 6<sup>th</sup> respondent to return back the money which was taken by the alleged detenu from the house of the petitioners, when she went along with the 6<sup>th</sup> respondent. It is conceded by the alleged detenu and the 6<sup>th</sup> respondent that the amount taken by them will be returned within a period of 3 months. It will be left open to the petitioners to take appropriate steps if the amount is not returned as promised above.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

