

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(Crl.).No. 238 of 2015 (S)

PETITIONER(S):

**THAJIMA .R,
AGED 45 YEARS, W/O.AYUB KHAN, KAIPPADAYIL VEEDU,
T.C.68/649, THIRUVALLAM .P.O., THIRUVANANTHAPURAM.**

BY ADV. SMT.SHAMEENA SALAHUDHEEN

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR GENERAL OF POLICE,
KERALA STATE, POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM - 695 010.**
- 3. THE ASSISTANT COMMISSIONER OF POLICE,
FORT SUB DIVISION, THIRUVANANTHAPURAM CITY,
PIN 695 001.**
- 4. THE SUB INSPECTOR OF POLICE,
NEMOM, THIRUVANANTHAPURAM DISTRICT - 695 020.**
- 5. THE SUPERINTENDENT OF POLICE,
CRIME BRANCH (CRIME INVESTIGATION DEPARTMENT),
KATHRIKADAVU, KOCHI 682 017.**
- 6. NASEEMA.A.M., W/O.SAINUDHEEN,
SULAIMAN STREET, NEAR AIRPORT, VALLAKADAVU,
THIRUVANANTHAPURAM - 695 008.**
- 7. SIMLA, D/O.SAINUDHEEN,
RESIDING NEAR BANK OF INDIA, IDAVAZHI ROAD,
THIRUVALLAM.P.O., THIRUVANANTHAPURAM - 695 027.**

**R1-R5 BY SMT. KOCHUMOL KODUVATH, GOVERNMENT PLEADER WITH
DIRECTOR GENERAL OF PROSECUTION SRI. T. ASAF ALI.**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

:2:

WP(Crl.).No. 238 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: A TRUE COPY OF THE COMPLAINT DATED 7.1.2014.

EXHIBIT P2: A TRUE COPY OF THE FIR DATED 22.3.2014.

RESPONDENT(S)' EXHIBITS

: **NIL**

// True Copy//

P.A. to Judge

SS

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

W.P.(Crl.) No.238 of 2015

Dated this the 10th day of June, 2015

JUDGMENT

C.K. Abdul Rehim, J

Wife of a missing person, namely Sri.Ayub Khan @ Shajahan, is the petitioner herein. She is seeking a writ of Habeas Corpus directing for production of the corpus of Sri.Ayub Khan @ Shajahan before this court and to secure his liberty.

2. Allegation is that the petitioner's husband left the house from where they were living together on 24.09.2013 and thereafter he is missing. All efforts made by the petitioner and her children to find out the detinue went in vain. It is stated that on the basis of a complaint of the petitioner Ext.P2 case was registered as Crime No.437/2014 at Nemom police station under Section 57 of the Kerala Police Act. But the investigation has not been proceeded

with any earnest efforts. Allegation is raised to the effect that the petitioner's husband is under illegal detention of respondents 6 and 7. On that premise this writ petition is filed.

3. When the matter came up for consideration on 02.06.2015, we directed the learned Government Pleader to get instructions from the investigating agency with respect to progress of investigation of Crime No.473/2014 of Nemom police station.

4. The 3rd respondent had filed a statement on today, enumerating details of the man missing case registered and about the progress of its investigation. It is mentioned therein that, in connection with the missing of Sri.Ayoub Khan @ Shajahan, a crime was registered at Nemom Police station on the basis of a complaint filed by the petitioner that the husband of the petitioner was missing from 24.09.2013 onwards. On the date of missing he went along with his mother to his ancestral home at Thiruvallam. But has not returned to the place where he

was residing along with the petitioner. The crime was registered on 22.03.2014 and the investigation went on. It is stated that crime memos were prepared and sent to the neighboring stations and neighboring districts and many persons were questioned in the case. The "District Missing Persons Tracing Unit (DMPTU)" had taken over the investigation and photograph of the missing person was published in news papers and notice was given through visual media. But the person could not be traced out, despite sincere efforts made. Investigation so far conducted revealed that the missing person was residing in a rented house along with the petitioner, his mother and children. He had borrowed a sum of ₹5,00,000/- from many people for his daughters marriage, which could not be returned. It is evident that he had left the place because of the above said reason and other reasons. It is further stated that a U.N. report was submitted in the crime through the 4th respondent on 12.02.2015. But now the case is re-opened and earnest efforts are being made to trace out the missing

person. A special squad was constituted under the leadership of the Inspector of Police, Nemom and the investigation is intensified. According to the 3rd respondent, some more time is required to trace out the missing person.

5. From the facts enumerated as above, it is evident that the petitioners husband is missing since September 2013 onwards. Even though a mere allegation is raised in this writ petition that he is under illegal confinement of respondents 6 and 7, and nothing is mentioned about the motive for any such illegal detention. The investigation conducted by the police authorities also revealed that, the missing person is not under any illegal confinement of respondents 6 and 7, as alleged. Therefore we are of the opinion that this is not a fit case to invoke jurisdiction of this court for the purpose of issuing any writ of habeas corpus. However, respondents 1 to 5 are directed to intensify the investigation of the crime registered with respect to missing of the petitioner's husband and to take all earnest efforts to trace out the missing person. It is also

made clear that, the petitioner will be at liberty to approach the appropriate authorities, if the investigation has not yielded in any positive result within a reasonable time.

Reserving liberty as mentioned above, this writ petition is disposed of.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy //

P.A. to Judge

SS