

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(Crl.).No. 282 of 2015 (S)

PETITIONER(S):

**FATHIMA SUHARA K., AGED 55 YEARS,
W/O.MOIDEEN C.K., CHENATTUKUZHAYIL HOUSE,
VALLUVAMBRAM P.O., MALAPPURAM.**

BY ADV. SRI.P.K.ANIL

RESPONDENT(S):

- 1. RAFEEQ,
S/O.ISMAIL, THACHANGADAN HOUSE, VALLUVAMBRAM,
MALAPPURAM - 673 642.**
- 2. SUB INSPECTOR OF POLICE, MALAPPURAM - 673 638.**
- 3. SUPERINTENDENT OF POLICE, MALAPPURAM - 676 505.**
- 4. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695 001.**
- 5. STATE OF KERALA
REP. BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

**R2-R5 BY SRI. T. ASAF ALI, DIRECTOR GENERAL OF PROSECUTION
GOVERNMENT PLEADER SMT. KOCHUMOL KODUVATH.**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
10-07-2015 ALONG WITH W.P(CRL.) NO.283/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

W.P.(Crl.) No.282 of 2015 &
W.P.(Crl.) No.283 of 2015

Dated this the 10th day of July, 2015

JUDGMENT

C.K. Abdul Rehim, J

Allegations raised in both these writ petitions are almost identical and the respondents are also more or less common in both these cases. Hence the cases were considered together and disposed of through this common judgment.

2. W.P.(Crl.)No.282/2015 is filed by the mother of one Sri.Saifudheen. Allegation is that the petitioner's son is being illegally detained by the 1st respondent and his associates. It is stated that the petitioner's son is a Bus Driver by profession, and on 26.05.2015, at 5.15 p.m. the 1st respondent and his associates have approached the Bus which was halted near Malappuram Collectorate and the petitioner's son was forced into a vehicle and taken away from the spot. According to the petitioner she had

approached respondents 2 and 3 complaining about the incident of kidnapping. But they were hesitant to take any action, allegedly due to political interference made at the instance of the 1st respondent. It is alleged that the 1st respondent is controlling "hawala and gold smuggling racket" in Malappuram district. According to the petitioner, the 1st respondent had kidnapped her son because he apprehends that the petitioner's son give secret information to facilitate seizure of an amount of Rupees three cores belonging to the 1st respondent, which is hawala money. It is only on the basis of such a vengeance that the petitioner's son was kidnapped and illegally detained is the allegation. The petitioner is seeking a writ of Habeas Corpus for directing production of the corpus of her son and to set him at liberty, based on the allegation that the petitioner's son is under illegal confinement of the 1st respondent and his associates.

3. W.P.(Crl.) No.283/2015 is filed by the mother

of one Sri.Yasar. In that case also the allegation is that the petitioner's son was kidnapped by the 1st respondent and his associates on 25.06.2015 at 5.00 p.m., from a place near Kondotty Junction by forcing him into a vehicle and by taking him away to some undisclosed place. In the said case also, it is alleged that, the 1st respondent is having vengeance against the petitioner's son for the very same reason as mentioned in the other case. It is further alleged that respondents 2 and 3 have not taken any action based on the complaint of the petitioner. In this case also the petitioner is seeking a writ of Habeas Corpus for directing production of her son and to set him at liberty, based on the allegation that he is being illegally confined by the 1st respondent and his associates.

4. In a statement filed on behalf of the 3rd respondent in W.P.(Crl.)No.282/2015 it is mentioned that, the petitioner therein came to the Malappuram police station complaining that her son Sri.Saifudheen was taken

into custody by the 1st respondent and his associates. But on the said date, certain police officials from Karnataka came to Malappuram police station and informed that they are investigating a case registered as Crime No.33/2015 before Billikara police station in Karnataka State, which is registered for offences punishable under Section 395 and 397 of I.P.C. Considering probability that the petitioner's son might have been secured by the Karnataka Police, the petitioner was informed to make enquiry with the police authorities at Billikkara, in Karnataka State. It was further advised that, if no satisfactory result is obtained, the matter may be informed back to the Malappuram Police station. Subsequently, on the basis of instructions sought by this court in this writ petition, the police authorities have contacted the Inspector of Police, Hunsur, who is the Investigating Officer of the case registered at Billikkara police station. It was revealed that Sri.Saifudheen, son of the petitioner, was arrested in connection with the said case

on 03.07.2015 at 8.00 p.m., at Thrimathy Village, Virajpetta, Kudak District. It is further informed that he was produced before the C.J.F.M.C. Senior Division Court, Hunsur on 04.07.2015 and he was remanded to judicial custody and put to Sub Jail, Krishnaraya Nagar.

5. A similar statement was filed by the 3rd respondent in W.P.(Crl.)No.283/2015. There also it is mentioned that son of the petitioner was arrested in the very same case on 01.07.2015 from Chamaraj Nagar and he was produced before the C.J.F.M.C. Senior Division Court, Hunsur and remanded to judicial custody, and he is put to Sub Jail, Krishnaraya Nagar.

6. From the facts revealed it is evident that, sons of the petitioners in both these cases were arrested in connection with a case registered in Karnataka State and they are under remand to judicial custody and is admitted to Sub Jail. Under such circumstances, there is nothing to indicate that the petitioner's sons are illegally detained by

the 1st respondent or his associates, as alleged in these writ petitions. Therefore there exists no circumstances warranting issuance of any writ of Habeas Corpus, by invoking powers vested on this court under Article 226 of the Constitution of India.

7. Learned counsel for the petitioners raised vehement contentions that the alleged detenues in both these cases were taken into custody on 25.06.2015. But the police authorities have recorded their arrest only on 01.07.2015 and 04.07.2015. Therefore it is contended that fundamental rights of the alleged detenues were seriously prejudiced and this court being a constitutional court has to exercise jurisdiction to redress their grievances. But this court is of the opinion that appeal made in this regard is totally misconceived. Specific case of the petitioners is that the alleged detenues were illegally taken into custody by the 1st respondent and his associates. If the petitioners or the alleged detenues are having any grievance with respect

to any illegal action on the part of the 1st respondent and his associates, their remedy is not to invoke jurisdiction of this court under Article 226. It will be left open to them to seek appropriate remedy against the 1st respondent or against any other persons involved in such illegal or criminal activity.

8. On the other hand, if the petitioners case is that the police authorities of Karnataka State had detained the alleged detenues in illegal custody, without producing them before the Magistrate Court within the statutory time limit prescribed, it is left open to the petitioners or the alleged detenues to prove such allegation before the appropriate court or authority and to seek appropriate remedy. Since such an allegation, now made by the counsel for the petitioner, require a detailed probe into the factual aspects and circumstances involved and evidence need to adduced in support of such allegations, this court cannot make any enquiry or adjudication on such aspects in this

writ petition filed seeking a writ of Habeas Corpus. Hence we make it clear that all such grievances of the petitioners or the alleged detenues can be agitated in appropriate proceedings before appropriate forum.

Under the above mentioned circumstances these writ petitions are dismissed subject to liberty reserved as above.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge