

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(Crl.).No. 288 of 2015 (S)

(IN RESPECT OF ILLEGAL DETENTION OF MINOR HRISHIKESH MANOJKUMAR

PETITIONER:

DIVYA, W/O.MANOJ KUMAR, AGED 28 YEARS,
RESIDING AT SREE NIKETH HOUSE, KRISHNA NAGAR,
POOTHOLE, THRISSUR 680004, KERLAA

BY ADVS.SRI.T.M.RAMAN KARTHA
SRI.MANJU R. KARTHA

RESPONDENTS:

1. CITY POLICE COMMISSIONER
ERNAKULAM, COCHIN 682 031.

2. SUB INSPECTOR OF POLICE
THOPPUMPADY, COCHIN 682 005.

3. MANOJ KUMAR GOVINDAN, AGED 36 YEARS,
MALATHY MANDIRAM 13/1153, RK PILLAI ROAD,
THOPPUMPADY POST, ERNAKULAM, PIN 682 005
(HOLDER OF INDIAN PASSPORT NO.H6939808 ISSUED FROM COCHIN)

4. GOVINDAN D.NAIR
MALATHY MANDIRAM 13/1153, RK PILLAI ROAD,
THOPPUMPADY POST, ERNAKULAM, PIN 682 005.

5. THE PASSPORT GRANTING OFFICER,
REGIONAL PASSPORT OFFICE, MUMBAI,
MANISH COMMERCIAL CENTRE, 216-A, DR.ANNIE BASANT ROAD,
WORLI, MUMBAI - 400025.

6. FOREIGNER REGIONAL REGISTRATION OFFICER (FRRO)
COCHIN, 2ND FLOOR, AIRLINES BUILDING,
COCHIN INTERNATIONAL AIRPORT, NEDUMBASSERY
PIN 683 111.

7. THE BUREAU OF IMMIGRATION,
COCHIN INTERNATIONAL AIRPORT, NEDUMBASSERI
ERNAKULAM DISTRICT PIN 683 111.

8. THE EMBASSY OF INDIAN IN ABU DHABI
PLOT NO.10, SECTOR W -59/02, DIPLOMATIC AREA,
OFF THE AIRPORT ROAD, PO.BOX 4090, ABU DHABI
UNITED ARAB EMIRATES.

R5-R8 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1- A TRUE COPY OF INDIAN PASSPORT NO.K 6733803 OF HRISHIKESH MANOJKUMAR, AGED 4.1/2 YEARS

EXT.P1(A)-A TRUE COPY OF UAE IDENTITY CARD NO.784-2010-0979865-9 OF THE MINOR HRISHIKESH MANOJKUMAR

EXT.P1(B)- A TREU COPY OF ISSURANCE CARD OF THE MINOR HRISHIKESH MANOJKUMAR ISSUED FROM TEH A1 AIM ABLIA INSURANCE CO.(PSC)

EXT.P2- TRUE COPIES OF THE PHOTOGRAPHS OF MINOR HRISHIKESH WITH HIS MOTHER AND MATERNAL GRANDMOTHER

EXT.P3- A TRUE COPY OF OP NO.382/2015 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THRISSUR DATED 20.3.2015

EXT.P4- A TRUE COPY OF THE OBJECTIONS FILED BY THE 3RD RESPONDENT IN OP NO.382/2015 BEFORE THE FAMILY COURT, THRISSUR DATED 25.4.2015

EXT.P5- A TRUE COPY OF THE ORDER DATED 14.5.2015 OF THE FAMILY COURT, THRISSUR IN OP NO.382/2015

EXT.P6- A TRUE COPY OF THE COMPLAINT DATED 29.5.2015 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT

EXT.P7- A TRUE COPY OF THE COMPLAINT DATED 29.5.2015 SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT

EXT.P8- A TREU COPY OF THE COMPLAINT DATED 29.5.2015 SUBMITTED BY THE PETITIONER BEFORE THE 7TH RESPONDENT

EXT.P9- A TRUE COPY OF THE COMPLAINT DATED 10.6.2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDNET

RESPONDENTS' EXHIBITS:NIL

/TRUE COPY/

P.S TO JUDGE

C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

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W.P.(Crl).No.288 of 2015
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Dated this the 2nd day of July, 2015.

JUDGMENT

Abdul Rehim, J:

The petitioner is the mother of the alleged detainee, Master. Hrishikesh Manojkumar, aged 4½ years, born out of her wedlock with the 3rd respondent. Marriage between the petitioner and the 3rd respondent was on 26.10.2009. After the marriage, the spouses lived together in Mumbai for sometime. The child was born at Mumbai on 23.12.2010. In August 2012, the 3rd respondent got an employment at Sharjah, UAE. Within three months thereof, the petitioner and the child were also taken to Sharjah on the strength of a family visa arranged by the 3rd respondent. Due to difference of opinion the petitioner and the 3rd respondent got separated on 29th March 2013. Since then the petitioner was staying along with her parents at Sharjah. It is alleged that the 3rd respondent took the child forcefully to India. It is alleged that the child was transported on a Passport of some other child. According to the petitioner, the original of the Passport, the 'UAE ID' and 'Insurance Card' of

the child are in the custody of the petitioner. When the child was taken to India by the 3rd respondent, the petitioner along with her parents came back and had negotiations with him for getting back custody of the child. It is conceded that, in January, 2014, the child was sent along with the petitioner and thereafter the petitioner was staying along with the child in her parental home at Thrissur. It is alleged that, thereafter the 3rd respondent took away the child from custody of parents of the petitioner, in her absence, and taken back the child to Sharjah. Eventhough the petitioner went back to Sharjah in search of the child, she could not locate him, because the 3rd respondent had left the child in the custody of his sister, who is settled in Ajaman, UAE. However, the petitioner located the child in the custody of the 3rd respondent's sister at UAE. Eventhough she had approached the authorities in UAE to get custody of the child, they have not taken any action. It is alleged that, when the petitioner attempted negotiations through brother-in-law of the 3rd respondent, the child was again removed to Kerala. Thereafter the petitioner reached Kerala and filed a case before the Family Court, Thrissur as O.P.No.382/2015 seeking for permanent custody of the child. It is specifically stated that in

order to avoid the legal consequences, the 4th respondent, who is the father of the 3rd respondent, had permitted the child to be in the custody of the petitioner, on 17.2.2014. But on the very next day the 3rd respondent again forcefully taken the child from her custody. The case before the Family Court, Thrissur was returned for presentation before proper court. Accordingly, the case was presented before the Family Court, Ernakulam and it is renumbered as O.P.No.1042/2015. An interim application seeking custody of the child was also filed along with the said case. It is stated that, eventhough the Family Court, Ernakulam ordered notice to the 3rd respondent, service could not be effected because the house of respondents 3 and 4 was seen locked and it was learnt that the 3rd respondent, his parents and the child have went back abroad. Subsequently service was effected through affixture and the case now stands posted before the Family Court, Ernakulam on 4.8.2005.

2. It is averred in the writ petition that the petitioner had submitted Exts.P6 to P8 complaints before the respondents 5 to 7 raising allegation that the 3rd respondent had taken the child abroad on the basis of forged travel document. She had also filed Ext.P9 complaint before the 1st respondent seeking

action to trace out the child and to rescue him from the alleged illegal detention. According to the petitioner, eventhough under normal circumstances custody of the child with the 3rd respondent cannot be considered as illegal detention, in the instant case the life of the child is in peril, since he was transported from Sharjah to India and back only for the purpose of defeating the legal proceedings initiated by the petitioner. Further, it is alleged that the child is being transported on the basis of the fake travel documents or on fake identity of the some other child. It is also alleged that the welfare of the child is prejudiced on account of the frequent transportation to the foreign country and back. The mental health of the child is put to prejudice due to the high handed action on the part of the 3rd respondent, is the allegation.

3. Based on the above mentioned facts, this writ petition is filed seeking for a writ of habeas corpus for causing production and release of the child, based on the specific allegation that the child is under illegal detention of the respondents 3 and 4.

4. As far as the present writ petition is concerned, the relief sought for is only to the extent of issuing a writ of habeas corpus for production and release of the child. For granting

such a relief, this court should be convinced that the alleged detainee, the minor child, is illegally detained. Admittedly, the child is in the custody of the 3rd respondent, who is the biological father of the minor child. Even assuming the allegations regarding frequent transportation of the child from Sharjah to Kerala and back is true and correct, that by itself cannot be taken as a reason to arrive at a conclusion that the child is illegally detained. On the facts conceded by the petitioner herself, the child was in the custody of the petitioner as well as the 3rd respondent intermittently during different periods, from March, 2013 onwards. Eventhough the allegation is that on two occasions the custody of the minor child was taken forcibly from the petitioner, we are not inclined to hold that the 3rd respondent had no authority to keep the child in custody, he being the son of the 3rd respondent. However, the question as to who among the petitioner and the 3rd respondent is legally entitled and competent person to have the custody of the child, is a matter which could not be adjudicated in this proceeding which is instituted under Article 226 of the Constitution of India. Evidently, the petitioner had already approached the appropriate court by instituting a proper legal

proceedings in this regard. It is for the petitioner to pursue the remedies available under law before that court to secure custody of the child. We find no reason to presume that the Family Court will not consider urgency of the matter, if it is moved for getting appropriate orders.

5. Vehement arguments were made for consideration of the matter by this Court, on the basis of the allegations that the child is being transported on the strength of fake documents to outside the country and back. It is affirmed by the petitioner that the original passport and other documents of the minor child is still in her possession. However, we notice that the petitioner had already moved respondents 5 to 7 by lodging complaints with respect to the alleged illegal acts on the part of the 3rd respondent. It is left open to the petitioner to pursue such remedies before those authorities. Even if the allegation of the petitioner regarding inaction on the part of the respondents 5 to 7 based on Exts.P6 to P8 is considered, no relief can be granted in this writ petition filed seeking a writ of habeas corpus directing for production of the child. It is left open to the petitioner to pursue such remedies against the administrative inaction if any, by taking appropriate legal

steps.

5. Since this court is not at all convinced that there exists any circumstance to invoke the jurisdiction vested under Article 226, for issuance of a writ of habeas corpus on the basis that the minor child Hrishikesh Manojkumar is illegally detained by the respondents 3 and 4, we are not inclined to admit this writ petition. It is made clear that the petitioner will be entitled to pursue remedies before the appropriate forum in this regard, untrammelled by any of the observations contained herein above.

This writ petition is dismissed subject to the above observations.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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