IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946

WP(CRL.) NO. 319 OF 2024

CRIME NO.329/2024 OF Hill Palace Police Station, Ernakulam

PETITIONER/S:

ABDUL KHADER, AGED 33 YEARS
S/O. ALIKUNJU, PETRO PALACE, FLAT NO.14C, KARINGACHIRA,
THRIPPUNITHURA, ERNAKULAM., PIN - 682301

BY ADVS.
R.ANIL
SUJESH MENON V.B.
THOMAS SABU VADAKEKUT
MAHESH BHANU S.
RESSIL LONAN
ANANTH KRISHNA K.S.
B.RAMAN PILLAI (SR.)
JOEL GEORGE KAMPIYIL

RESPONDENT/S:

1 **STATE OF KERALA**
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, STATUE, THIRUVANANTHAPURAM, PIN - 695001

2 **COMMISSIONER OF POLICE**
COCHIIN CITY, ERNAKULAM,, PIN - 682031

3 **STATION HOUSE OFFICER**
HILL PALACE POLICE STATION, ERNAKULAM, PIN - 682301

4 **SALMA IRFANA, AGED 21 YEARS**

D/O.MOHAMMED IQUBAL, KAZHI LANE,
THALANGARA, KASARGOD, PIN - 671122

5 JABIR.H.M, AGED 25 YEARS
S/O.SHAHUL HAMEED, THERUVATH CERAMICS ROAD, PRIYA QUARTHERS,
THALANKARA, KASARGOD, PIN - 671122

6 SUHARA (SOUGHT TO BE IMPLEADED)
W/O. IQBAL, RESIDING AT MALIKHDEENAR MANZIL, KAZI LANE,
THALANGARA P.O., KASARGOD DISTRICT (SOUGHT TO BE IMPLEADED)

BY ADVS.
THAREEK T.S., SEBASTIAN PHILIP
C.C.ANOOP(K/1161/2010)
R.ANAS MUHAMMED SHAMNAD(K/590/2012)
SRI.B.VINOD, CGC(CG-204)
MOHANAN PILLAI M.B.(K/2002/2023)

SRI SAIGI JACOB PALATTY, SR. GP.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 27.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Raja Vijayaraghavan, J.

The petitioner is the husband of the "Corpus" (referred to as "Ms. X" for ease). They have a child, who is now aged two years. It is the case of the petitioner that his marriage with Ms. X was solemnized on 04.01.2021. He states that on 18.03.2024, Ms. X and his minor son were found missing. According to him, Ms. X has been in an affair with the 5th respondent before marriage and he has received reliable information that she has been abducted by the 5th respondent and is kept under illegal confinement. He states that he has lodged a complaint before the police leading to the registration of Ext.P2 FIR under Section 57 of the Kerala Police Act, 2011. According to the petitioner, the 5th respondent with whom Ms. X has eloped with the minor child is a person with criminal antecedents. It is on these assertions that this writ petition was filed seeking writ of habeas corpus to produce Ms. X and the minor child before this court and set them at liberty.

2. When this petition had come up for consideration on 26.03.2024, it was brought to the notice of this Court that "Ms. X" has been traced out and she has been produced before the Judicial First Class Magistrate Court, Tripunithura.

3. This Court, by order dated 26.03.2024 directed the 3rd respondent to produce Ms. X before this Court along with her minor child.

4. In tune with the directions, the 4th respondent and the minor child were produced before us.

5. We have interacted with the 4th respondent, her parents as well as the petitioner.

6. The 4th respondent is an adult lady aged 21 years. She insisted that she was not in illegal detention and she had left the company of the petitioner of her own free volition. She stated that she was subjected to physical and mental abuse by the petitioner and expressed no desire to stay with him. Despite her complaints to her parents, they sided

with the petitioner, insisting that she continue to live with him and preserve the family's reputation. She states that the 5th respondent has granted her refuge and she is desirous of going with him. She emphasized that she is an adult and she is the best suited person to take care of her child.

7. The contention of the parents of the 4th respondent as well as the petitioner is that the minor child would not be safe as the 4th respondent would be in the company of the 5th respondent, a person with criminal antecedents.

8. Since we were troubled by the assertion and about the well-being of the child if he is retained by his mother, we directed "Ms. X' as well as the petitioner to appear before the High Court Legal Service Committee, and the Committee was directed to provide the service of a Counselor at the Family Counselling Centre. Directions were issued to the Counsellor to interact with the parties and to place the report before this Court within two hours.

9. The matter was later taken up before this Court along with the report. We have again interacted with the 4th respondent, who reiterated her grievances against the petitioner. She further stated that she is breastfeeding her child and she is the best person to ensure that no harm would befall the child. According to her, the child would need her company, care, and protection. In response to the contention of the petitioner and her family members that Ms. X and the child has no place to reside and that they would be deprived of the company of the child, it is submitted by Ms. X that she would convey her address and phone number to her parents and the petitioner and she has no objection in them visiting her or the child.

10. The learned counsel appearing for the petitioner submits that the minor child would not be safe while Ms. X is in the company of the 5th respondent. According to the learned counsel, the parents of the 4th respondent be entrusted with the child and the mother can be granted visitation rights.

11. We have carefully considered the submissions advanced.

12. In a petition for the issue of a writ of Habeas Corpus, we are only concerned with the question whether the alleged detenu is detained against her wish, will, and desire by anyone. The correctness, prudence or wisdom of the decisions of the alleged detenu are not justiciable before the Court. The alleged detenu, as noted earlier, is an adult woman. The alleged detenu has stated before this Court that she is not under illegal confinement. We do not think that it would be appropriate or feasible to separate the baby boy from the mother in the facts and circumstances, particularly at the breastfeeding stage. It is for the petitioner to approach the jurisdictional Family Court and seek custody or visitation rights.

13. In **Devu G. Nair**[1]**,** the Apex Court has formulated guidelines for the Courts dealing with Habeas Corpus petitions. It was ordered that if the allegedly detained or missing person expresses their wish to not go back to the alleged detainer or the natal family, then the person must be released immediately without any further delay.

[1] Devu G. Nair v. State of Kerala [2024 KHC OnLine 6157]

14. The petitioner is not entitled to any of the reliefs. sought for. This petition is disposed of.

sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

sd/-
P.M.MANOJ
JUDGE

das

APPENDIX OF WP(CRL.) 319/2024

PETITIONER EXHIBITS

Exhibit-P1	**THE TRUE COPY OF THE BIRTH CERTIFICATE DATED 25-3-2022 OF THE BABY BOY MOHAMMED MOYNUDHEEN ISSUED BY THE CORPORATION OF MANGALORE**
Exhibit-P2	**TRUE COPY OF THE FIRST INFORMATION REPORT NO.329 OF 2024 OF HILL PALACE POLICE STATION**