

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE K. BABU

THURSDAY, THE 27TH DAY OF MAY 2021 / 6TH JYAISHTA, 1943

WP(CRL.) NO. 126 OF 2021

PETITIONER:

ABDUL SAMED, AGED 50 YEARS,
C/O.MOHAMED THAYYIL, RESIDING AT THAYYIL HOUSE,
PANG P.O., PULIVETTY, KURUVA, MALAPPURAM DISTRICT,
PIN - 679 338.

BY ADV P.T.SHEEJISH

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
- 2 THE DIRECTOR GENERAL OF POLICE
OFFICE OF THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN - 695 013.
- 3 CIRCLE INSPECTOR OF POLICE
VENJARAMOODU POLICE STATION,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 607.
- 4 THE STATION HOUSE OFFICER
VENJARAMOODU POLICE STATION,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 607.
- 5 MUBEENA, AGED 30 YEARS,
W/O.ABDUL SAMED, PALLIKUNNIL THADATHARIKATHU VEEDU,
KONANVENGA P.O., PULLAMPARA, THIRUVANANTHAPURAM
DISTRICT, PIN - 695 568.

SRI.SAIGI JACOB PALATY, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
27.05.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS & K. BABU, JJ.

W.P.(Crl) No.126 of 2021

Dated this the 27th day of May, 2021

JUDGMENT

Alexander Thomas, J.

The prayer in the aforecaptioned criminal writ proceedings, filed under Article 226 of the Constitution of India are as follows:-

- “i) Issue a writ of habeas corpus or any other appropriate writ or order or direction, directing the respondents 1 to 4, to produce the corpus of the boy, named as T. Amjad, aged 04 years, who is the son of the petitioner, before this Hon'ble Court, in the interest of justice.*
- ii) Grant such other relief as this Hon'ble Court may deem fit and proper in the circumstances of this case.”*

2. Heard Sri.P.T. Sheejish, the learned counsel appearing for the petitioner, and Sri.Saigi Jacob Palatty, the learned Public Prosecutor appearing for official respondents 1 to 4. In the nature of the orders proposed to be passed by this Court in this petition, notice to contesting respondent No.5 will stand dispensed with.

3. The case projected in this petition is to the effect that the petitioner is a Muslim who had married a lady and the said marital relationship is subsisting and that there are two children born in the said wedlock of the petitioner with the said lady. That, thereafter the petitioner aged 50 years, has solemnised a second marriage with the 5th respondent.

Further that the alleged detenu, T. Amjad, aged 4 years, is the child born in the wedlock of the petitioner with the 5th respondent. That the 5th respondent had eloped with another man named Sudheer and the child is illegally detained at the instance of the 5th respondent and the said man.

4. Sri.Saigi Jacob Palatty, the learned Public Prosecutor, appearing for official respondents 1 to 4 would submit on the basis of instruction of the 4th respondent-Station House Officer, that the police officials concerned have conducted enquiries on the petitioner's case and has recorded the statement of the 5th respondent and that the alleged detenu, T. Amjad, is also with the 5th respondent and the statement of the 5th respondent has also been recorded, whereby she has stated that due to extreme marital discord with the petitioner, she was constrained to go away from the marital home and that she is now residing in the house of her deceased parents and that she, as a mother, has every right to have custody of the minor son T. Amjad, who is aged only 4 years and that the custody of the child is not illegal. Further she has also stated before the Police that she has no objection in the petitioner visiting the child appropriately once in a week after prior appointment.

5. From the abovesaid submissions it appears that, the case of illegal detention is not seriously disclosed in this case and if at all the petitioner has any disputes or issues with the 5th respondent as regards the custody of their minor son, it is for him to workout such legally justiciable grievances before

the Family Court concerned.

6. However, taking note of the fact that the petitioner is the mother of the child, it is ordered that the 4th respondent-Station House Officer, as a one time measure, may ensure that the petitioner may be given an opportunity to interact with the child in the place where the 5th respondent and the child are now residing, in the presence of a woman police official. In that regard, the 4th respondent may make appropriate arrangements after co-ordinating both the petitioner and the 5th respondent and the time and place of the said visit in the presence of the woman police officer may be informed to the petitioner and the 5th respondent. Thereafter, in case, the petitioner has any legally justiciable grievances it is for him to work out his remedies in accordance with law and before the appropriate Forum like Family Court, etc.

With these observations and directions the above writ petition (criminal) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS,
JUDGE**

Sd/-

**K. BABU,
JUDGE**

ANNEXURE

PETITIONER'S EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE BIRTH CERTIFICATE OF THE
DETENUE.
- EXHIBIT P2 THE TRUE COPY OF THE PHOTOGRAPH OF THE 5TH
RESPONDENT AND THE DETENUE.
- EXHIBIT P3 THE TRUE COPY OF THE COMPLAINT DATED
28/03/2021 FILED BY THE PETITIONER BEFORE THE
4TH RESPONDENT.
- EXHIBIT P4 THE TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT
DATED 09/04/2021 ISSUED BY THE VENJARAMOODU
POLICE.