



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

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THE HONOURABLE MR. JUSTICE P.M.MANOJ

MONDAY, THE 3RD DAY OF JUNE 2024 / 13TH JYAISHTA, 1946

WP(CRL.) NO. 584 OF 2024

CRIME NO.230/2021 OF WANDOOOR POLICE STATION, MALAPPURAM

PETITIONER:

XXXXX , AGED 45 YEARS
XXXXXXXX, PIN - 679339

BY ADVS.
A.PARVATHI MENON
P.SANJAY
BIJU MEENATTOOR
INDIRA.K.P.
PAUL VARGHESE (PALLATH)
KIRAN NARAYANAN
RAHUL RAJ P.
MUHAMMED BILAL.V.A
MEERA R. MENON
BASILA BEEGAM
DEVIKA S. PRASAD

RESPONDENTS:

- 1 DIRECTOR GENERAL OF POLICE, STATE POLICE HEADQUARTERS,
VELLAYAMBALAM, THIRUVANATHAPURAM, PIN - 695010
- 2 DISTRICT POLICE CHIEF
DISTRICT POLICE OFFICE, UPHILL,



MALAPPURAM, PIN - 676505

- 3 DEPUTY SUPERINTENDENT OF POLICE
NILAMBUR, MALAPPURAM, PIN - 679329
- 4 STATION HOUSE OFFICER, WANDOOOR POLICE STATION,
WANDOOOR P.O., MALAPPURAM, PIN - 679328
- 5 SHIBILA , D/O SAITHALAVI, PANTHRANIYIL HOUSE,
AMARAMBALAM P.O., WANDOOOR, MALAPPURAM, PIN - 679332
- 6 REJINA
AGED 47 YEARS
D/O HYDRU,
PARAYANGADAN HOUSE,
AMARAMBALAM P.O.,
MALAPPURAM,
PIN - 679332

R1 TO R4 BY SRI. P. M. SHAMEER, GOVERNMENT PLEADER

R5 & R6 BY ADVS.ELDHO ALIAS
REVATHY K. KAPPIL(K/292/2012)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
03.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****Raja Vijayaraghavan, J.**

The petitioner herein is the father of the corpus ('Ms.X' for the sake of brevity). He has approached this Court seeking the following relief:-

" Issue a writ of Habeas Corpus directing the respondents 1 to 4 to produce the detenu, xxx, victim in POCSO crime, FIR 230/2021 of Wandoor Police Station who is illegally detained at the behest of the 5th and 6th respondents.

2. The short facts are as under:-

The petitioner contends that Ms. X (name withheld for privacy reasons), his daughter, is the victim in Crime No. 230/2021 of Wandoor Police Station, registered against the 5th respondent under the provisions of the Protection of Children from Sexual Offences Act, 2012. The specific allegation is that the 5th respondent, a woman, subjected Ms. X to sexual assault. After the crime was registered on 27.07.2021, Ms. X was placed under the care and protection of the Child Welfare Committee, Malappuram. She later secured admission to Marcus Law College, Kozhikode. While pursuing her education, the 5th respondent managed to reestablish contact with Ms. X. The petitioner asserts that the accused's action in contacting the victim is objectionable and an application has been filed to cancel the bail granted to the accused. The



petitioner further states that Ms. X left home without informing her parents, prompting the lodging of a complaint to the Wandoor Police Station. She returned home on 10.12.2023, and started exhibiting hostile behaviour towards her parents. On 03.02.2024, Ms. X left her hostel, and a complaint was lodged with the 4th respondent upon receiving this information. Ms. X was traced out but she expressed her desire to stay with the 6th respondent, who is allegedly a close associate of the 5th respondent. The petitioner has lodged several complaints with the official respondents, seeking action, and claims that his daughter is being illegally detained by respondents 5 and 6.

3. By order dated 30.05.2024, we directed the 4th respondent to ensure the production of Ms. X before us.

4. We have interacted with the detenu who stated before us that she is residing in the company of the 6th respondent on her own free will. She also stated that she has been subjected to mental as well as physical abuse at her residence and that she, being an adult, has taken a conscious decision to live life on her own terms. Ms.X has admittedly crossed the age of 18 years.

5. In **Gian Devi v. Superintendent, Nari Niketan, Delhi**¹, the Apex

¹ (1976) 3 SCC 234



Court held that once a woman was 18 years of age, no fetters could be placed on an individual's choice on where and with whom she wished to reside. It was observed:

“...Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter.”

6. The Hon'ble Supreme Court in **Shafin Jahan v. Asokan K.M.**² has observed that the pivotal purpose of a writ of habeas corpus is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detenu is produced before it, find out about his/her independent choice, and see to it that the person is released from illegal restraint. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution,

² (2018) 16 SCC 368



provided the said choice does not transgress any valid legal framework. Once that aspect is clear, the inquiry and determination have to come to an end.

7. In **Soni Gerry v. Gerry Douglas**³, the Supreme Court has held as under while upholding the choice of her adult daughter to live with her father instead of her mother. In upholding the daughter's choice, the Court observed in paragraph 11 of the judgement:

11. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice. The Courts cannot, as long as the choice remains, assume the role of *parens patriae*. The daughter is entitled to enjoy her freedom as the law permits and the Court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

8. Therefore, in a habeas corpus petition, like in the present case, when the plea before the Court is that a person should be protected against persons with whom she is moving on her own free will by making personal life choices, this Court has to recognize the right of 'choice' of the alleged detenu . Her right to life, liberty, and dignity is to be respected while deciding the issue. As the petitioner, who is an adult, has expressed her desire to live her life in the

³ 2018 (1) KHC 142



manner she chooses, no fetters can be placed on the same. No restriction can also be imposed regarding the place where she should stay. The court or the family members of Ms.X cannot substitute their opinion or preference for that of the petitioner in such a matter.

This petition is dismissed.

sd/-

**RAJA VIJAYARAGHAVAN V
JUDGE**

sd/-

**P.M.MANOJ
JUDGE**

DCS

**APPENDIX OF WP(CRL.) 584/2024**

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE GENERAL DIARY ENTRY DATED
04.02.2024 OF THE WANDOOR POLICE STATION
- Exhibit P2 THE TRUE COPY OF THE COMPLAINT MADE BY THE
PETITIONER BEFORE THE 2ND RESPONDENT ON
08.02.2024 DATED NIL
- Exhibit P3 THE TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND
RESPONDENT/S OFFICE DATED 08.02.2024
- Exhibit P4 THE TRUE COPY OF THE COMPLAINT MADE BY THE
PETITIONER BEFORE THE 2ND RESPONDENT ON
12.03.2024 DATED NIL
- Exhibit P5 THE TRUE COPY OF THE RECEIPT ISSUED BY THE
DISTRICT POLICE CHIEF'S OFFICE DATED
12.03.2024
- Exhibit P6 THE TRUE COPY OF THE FIR REGISTERED AGAINST
THE 5TH RESPONDENT, FIR NO. 0230/2021