

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 7TH DAY OF JULY 2021 / 16TH ASHADHA, 1943

W.P(CRL.) NO.142 OF 2021

PETITIONER/S:

GILBERT P.T., AGED 44 YEARS, S/O. THOMAS,
PALATTIL HOUSE, THENHIPALAM P.O.,
MALAPPURAM DISTRICT-673636.

BY ADVS.

SRI.SAJITH KUMAR V.

SRI.VIVEK A.V.

SRI.GODWIN JOSEPH

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HOME AFFAIRS, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695001.
- 2 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695010.
- 3 THE DISTRICT POLICE CHIEF, MALAPPURAM DISTRICT,
O/O. DISTRICT POLICE OFFICE, UP HILL,
MALAPPURAM P.O., MALAPPURAM DISTRICT-676505.
- 4 THE STATION HOUSE OFFICER,
THENHIPALAM POLICE STATION, CALICUT UNIVERSITY RD.,
KORACHANKANDY, THENHIPALAM P.O.,
MALAPPURAM DISTRICT-673636.
- 5 CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY ITS DIRECTOR, CBI, HEAD QUARTERS,
6TH FLOOR, LODHI ROAD, PLOT NO.5-B,
JAWAHARLAL NEHRU STADIUM MARG,
CGO COMPLEX, NEW DELHI-110003.
- 6 NATIONAL INVESTIGATION AGENCY,
REPRESENTED BY ITS DIRECTOR, NIA HEAD QUARTERS,
NIA BUILDING, OPP. DYAL SINGH COLLEGE RD.,
CGO COMPLEX, PRAGATI VIHAR, NEW DELHI-110003.

- 7 THERBIYATHUL ISLAM SABHA,
 REPRESENTED BY ITS MANAGER/PROPRIETOR, MUKHADAR,
 CALICUT HO, CALICUT P.O., KOZHIKODE-673001.
- 8 YUNUS KOZHITHODI, S/O. KUNJUTTY HAJI,
 RESIDING AT PANACHIYIL HOUSE, NEEROLPALAM,
 THENHIPALAM P.O., MALAPPURAM DISTRICT-673636.
- 9 NASEEMA YUNUS, W/O. YUNUS KOZHITHOD,
 RESIDING AT PANACHIYIL HOUSE, NEEROLPALAM,
 THENHIPALAM P.O., MALAPPURAM DISTRICT-673636.
- 10 BUSHARA, W/O. BASHEER PONNACHAN,
 CHARAVALAPPIL HOUSE, NEEROLPALAM, THENHIPALAM P.O.,
 MALAPPURAM DISTRICT-673636.

R1 TO R4 BY SRI.T.A.SHAJI, DIRECTOR GENERAL OF
PROSECUTIONS;

BY ADV SRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR;

R5 & R6 SRI.P.VIJAYAKUMAR, ASST.SOLICITOR GENERAL OF INDIA;

R7-SRI.MOHAMMED SAVAD.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 07.07.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. Vinod Chandran & Ziyad Rahman, JJ.

W.P(Cr1.)No.142 of 2021-S

Dated, this the 07th day of July, 2021

JUDGMENT

Vinod Chandran, J.

The petitioner was before this Court concerned with the welfare of his 'second wife' and son, who were alleged to have been taken away forcefully by respondents 7 to 10 for the purpose of converting the mother and son to Islam. It was also alleged that through the second wife, the petitioner was also offered Rs.25,00,000/- (Rupees twenty five lakhs) for converting to Islam. The petitioner had expressed apprehensions about the life of his second wife and child and had spoken on the antecedents of respondents 8 to 10. The attempt was to say that the mother and son were in the custody of an extremist body.

2. We issued notice and directed the mother and child to be produced before us. The 7th respondent appears through Counsel.

3. The police produced the mother and son before us today. We first talked with the officer, Shri.Shaiju N.B., Inspector of Police, Thenhipalam, who produced both

before us. He informed us that on investigation it was found that the mother, who is produced before us, is the sister of the petitioner's wife. They were living together, but differences cropped up. The sister of the petitioner's wife along with her son moved out and have been living alone separately. It was also stated that the petitioner is not legally wedded to his sister-in-law. The officer also informed us that the mother is now working in a Bakery, the owner of which was a Muslim, and the mother was attracted by the religion. Now she has converted to Islam and is undergoing training.

4. Then, we conversed with the lady alone without the presence of the Police or the learned Counsel appearing for the parties. The lady told us that she converted to Islam on her own free will and there was no coercion from anybody. She also admitted the relationship with the petitioner, but alleged that the petitioner has not been looking after herself and the child for some time. She also admits that there is no valid marriage between herself and the petitioner. She is working in a Bakery and has now converted to Islam. She asserted that her son was not converted.

5. We, later, called the son and talked with him alone without anybody's presence. He also narrated the same story and wants to be with the mother. He said that he has not been converted to Islam and has not yet decided.

6. We also heard the learned Counsel appearing for the parties. The learned Counsel for the petitioner requested that the petitioner and his wife, who is the sister of the alleged detinue, are present and they may be allowed to interact with the petitioner's second wife and son, together and alone. We permitted that and they interacted for more than an hour in an empty Court Hall.

7. We again interacted with the mother and son. We first called the boy and interacted with him. He was slightly confused and was choking, in which circumstance we specifically asked him whether he wanted to tell us anything specifically about any difficulties faced by him. He told us that he has no difficulties, but his interaction with the petitioner and family saddened him. Then we asked whether he and his mother are facing any threats or undue coercion which he categorically denied. He informed us his decision that he would like to go with his mother. We then talked to the lady and she expressed her desire to live by herself along with her son. In these circumstances, we do

not find any reason to keep the writ petition pending.

8. When we talked to the mother, we again asked whether she had any fears or apprehensions which she wants to share with us. She told us that the son's studies are being interrupted due to frequent interference by outsiders and even the media. We perfectly understand this, because the moment we issued notice, which the Court usually does in petitions seeking a writ of *habeas corpus*; unless there are very compelling circumstances otherwise, there appeared columns in the media with an innuendo that the mother and child are in the custody of extremist bodies. We are saddened and dismayed because such outbursts, without verifying the ground realities, only results in polarization of communities, which civil society can ill-afford. We, hence, direct the jurisdictional Police that if a complaint is raised by the subject-lady before the Police of any harassment, the Police shall take immediate action to ensure that the mother and son are allowed to live their life without undue interference and harassment.

9. The petitioner's Counsel asked for an interim custody of the child for some days. However, we are of the opinion that in the present circumstances, that is not

conducive. If there is any dispute on custody, that is to be agitated before the Family Court. We leave liberty to either parties to agitate such cause before the appropriate Family Court.

The writ petition would stand dismissed. No costs.

Sd/-

K.VINOD CHANDRAN
JUDGE

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

Vku/-

APPENDIX OF WP(CRL.)NO.142/2021

PETITIONER'S EXHIBITS

- Exhibit P1 A TRUE COPY OF THE FIR DATED 10.6.2021 ALONG WITH THE F.I. STATEMENT IN CRIME NO.207/2021 OF THENHIPALAM POLICE STATION.
- Exhibit P2 A TRUE COPY OF THE STATEMENTS DATED 10.6.2021 BY THE DETENUE SMT. SHINI BEFORE THE HON'BLE MAGISTRATE, PARAPPANANGADY.
- Exhibit P3 A TRUE COPY OF THE STATEMENTS DATED 10.6.2021 BY THE DETENUE MR. AKASH BEFORE THE HON'BLE MAGISTRATE, PARAPPANANGADY.
- Exhibit P4 A TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT THROUGH E-MAIL ON 16.6.2021 ALONG WITH E-MAIL RECORD.
- Exhibit P5 A TRUE COPY OF THE NEWS PAPER REPORT DATED 28.6.2021 OF THE NEW INDIAN EXPRESS.
- Exhibit P6 A TRUE COPY OF REPORT DATED 12.7.2012 OF THE NEW INDIAN EXPRESS.
- Exhibit P7 A TRUE COPY OF THE NEWS PAPER REPORT DATED 26.7.2016 OF THE INDIAN EXPRESS.
- Exhibit P8 A TRUE COPY OF THE NEWS PAPER REPORT DATED 26.8.2017 OF THE NEW INDIAN EXPRESS.