

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

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THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

FRIDAY, THE 28<sup>TH</sup> DAY OF APRIL 2023 / 8TH VAISAKHA, 1945

WP (CRL.) NO. 411 OF 2023

**PETITIONER:**

RAJESH @ RAJESH S KURUP  
AGED 44 YEARS, S/O SASIDHARA KURUP,  
RESIDING AT 'NIKUNJAM', VETTUVENIMURI, HARIPAD,  
ALAPPUZHA, PIN - 690514

BY ADVS.S.AJITHA KUMARI  
SYAM KUMAR A.G.

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY TO HOME DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 SUPERINTENDENT OF POLICE  
OFFICE OF THE SUPERINTENDENT OF POLICE,  
CCSB ROAD, CIVIL STATION WARD, ALAPPUZHA- 688012
- 3 THE STATION HOUSE OFFICER,  
HARIPPAD POLICE STATION,  
ALAPPUZHA DISTRICT, PIN - 690514
- 4 PARVATHY P,  
AGED 37 YEARS, W/O RAJESH RESIDING AT POKKATT  
HOUSE, MALAMELKODU MURI, CHEPPADU VILLAGE,  
ALAPPUZHA, PIN - 690507
- 5 RAMACHANDRAN PILLAI, AGED 73 YEARS,  
S/O NARAYANA PILLAI,  
RESIDING AT POKKATT HOUSE, MALAMELKODU MURI,  
CHEPPADU VILLAGE, ALAPPUZHA, PIN - 690507

**OTHER PRESENT:** SR GP SMT C S SHEEJA

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 28.04.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**BECHU KURIAN THOMAS & C. JAYACHANDRAN, JJ.**

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**W.P.Crl.)No.411 of 2023**

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Dated this the 28<sup>th</sup> day of April, 2023

**JUDGMENT**

C. Jayachandran, J.

In the height of spousal discord, the warring spouse strives for the so-called complete triumph over the other, but hardly do they realise the trauma and agony of their children, especially when they are minors. A four year old boy by name, Niranjan.R.Kurup is the victim before us in the given facts. His father, the petitioner, seeks issuance of a writ of habeas corpus for production of the said child before the court, on the premise that his custody with the 4<sup>th</sup> respondent/mother in violation of Exts.P8 and P10 orders of the Family Court, Mavelikkara is illegal, amounting to unlawful detention, thus warranting interference of this Court by issuance of the writ sought for.

2. Heard Smt.Ajitha Kumari S, learned counsel for the petitioner, Sri.Arun Chandran, learned counsel for respondents 4 and 5 and the learned Government Pleader on behalf of respondents 1 to 3.

3. For a proper appreciation of the issues involved in this writ petition, it is necessary to refer to the legal proceedings which transpired by and between the petitioner and the 4<sup>th</sup> respondent. The petitioner and the 4<sup>th</sup> respondent are husband and wife respectively and two children - a daughter by name Gowri.R.Kurup, aged 12 years and a son, Niranjana.R.Kurup (the alleged detenu herein), aged 4 years - were born in that wedlock. The marital relationship between the petitioner and the 4<sup>th</sup> respondent is admittedly estranged.

4. The petitioner filed Ext.P1 original petition [O.P. (G&W)No.1505/2022] before the Family Court, Mavelikkara seeking permanent custody of both the wards. In an interlocutory application (I.A.No.1/2022) preferred in the said original petition, the Family Court, Mavelikkara passed an order restraining the mother of the wards (the 4<sup>th</sup> respondent herein) from objecting/obstructing the petitioner/father taking the minor daughter, Gowri.R.Kurup to USA, on condition that the petitioner shall produce the ward before the court as and when directed. The petitioner preferred I.A.No.6/2023 in the said original

petition for renewal of Ext.P4 passport of the minor son (the alleged detenu herein), which was due to expire on 23.4.2023. In the said proceedings, the 4<sup>th</sup> respondent herein gave a written undertaking before the Family Court to produce the minor boy/detenu before the US Embassy at Chennai on 26.3.2023 for renewal of passport and visa. The said undertaking was given on 23.3.2023. Although the petitioner made all arrangements for the travel and stay of the 4<sup>th</sup> respondent and her mother, she did not turn up. Thereupon, the petitioner preferred three interlocutory applications before the Family Court, I.A.No.10/2023 seeking to initiate contempt proceedings against the 4<sup>th</sup> respondent under Section 44 of the Guardians and Wards Act; I.A.No.12/2023 seeking to handover the documents pertaining to the minor boy/detenu, including his passport, to the petitioner; and I.A.No.14/2023 seeking orders to bring the minor boy/detenu to USA for renewal of passport. As per Ext.P8 order, the Family Court allowed all the three I.As., inter alia directing the 4<sup>th</sup> respondent herein to produce the documents pertaining to the minor boy/detenu before the Family Court on 11.4.2023, as also, production of the minor boy on the same

date, so as to handover the interim custody of the ward to the petitioner's power of attorney holder till 25.4.2023, the obvious purpose being renewal of the passport. Pointing out that no slots are available for renewal of passport in the US consulate in India during the period of custody granted vide Ext.P8 order, the petitioner sought for review of Ext.P8 order by filing Ext.P9 application [I.A.No.15/2023]. The same was allowed vide Ext.P10 order, as per which, Ext.P8 order was modified granting custody of the minor boy/detenu to the petitioner/father from 13.4.2023 and permitting the ward to be taken to USA, upon executing a bond for Rs.5,00,000/-. A perusal of Ext.P10 order would amplify that the scope of custody granted to the petitioner has been substantially enlarged from that of a custody to enable renewal of the passport to one enabling residence and study of the minor ward at USA. The said order was also not complied with. Thereupon, the petitioner preferred I.A.No.18/2023 for appointment of an Advocate Commissioner to trace out the minor ward, which interlocutory application was also allowed. However, the Advocate Commissioner, vide Ext.P12, reported non-compliance, since the S.H.O. concerned and the 4<sup>th</sup>

respondent herein have not co-operated. Although orders were passed by the Family Court, Mavelikkara vide Exts.P14 and P16 on applications preferred by the petitioner directing the 2<sup>nd</sup> respondent Superintendent of Police to produce the ward before court, as also, for arresting the minor ward and production before the court, no useful purpose was served. Thus, the petitioner approached this Court seeking the writ of habeas corpus, after exhausting all possible statutory remedies to obtain the custody of his minor son.

5. We also notice that an original petition has been filed as O.P.(FC) No.216 of 2023 challenging Ext.P10 order, which also came up for admission before us today. The main contention urged by the petitioner (the 4<sup>th</sup> respondent herein) is that by virtue of Ext.P4 order (Ext.P10 in the instant writ petition) the respondent/father had obtained permanent custody of the younger ward as well, under the guise of renewal of passport.

6. On 25.04.2023, a Division Bench of this Court directed the District Police Chief, Alappuzha to ensure that the minor

ward/detenu is produced before this Court on 28.04.2023 (today). Accordingly, the child is produced today.

7. Having heard the learned counsel appearing on both sides and perused the records, we cannot but endorse the finding of the Family Court in Exts.P8 and P10 orders that the 4<sup>th</sup> respondent herein had flouted the orders of the Family Court directing the production of the child for the purpose of renewal of passport. We prima facie concur with the reasons and directions contained in Ext.P8 order. However, we feel that the contentions raised in O.P.(FC)No.216/2023 also deserves serious consideration. We notice that in Ext.P9 review petition seeking review of Ext.P8 order, the prayer was only to permit the custody of the minor ward to the review petitioner for the purpose of bringing the ward to USA and to get his passport renewed. Of course the term employed in the prayer is permanent custody, but the specific purpose was as referred to above. The hallmark of the review petition is the absence of slot in the US Embassy for the purpose of renewal of passport in the period during which custody was granted the petitioner vide Ext.P8 order. It is for

that reason the petitioner sought for modification of Ext.P8 order enabling the petitioner to bring the minor ward/detenu to USA to get the passport of the second ward renewed. It is true that the petitioner had also averred that for the welfare, better future education and for affording best opportunities, it is in the interest of the minor ward to be in the custody of the petitioner for a longer period. Barring that single sentence in the review petition, the review, especially the prayer therein, was modification of Ext.P8 order enabling the minor boy/detenu to be taken to USA for the purpose of renewal of passport.

8. However, in Ext.P10 order, the question of custody of the minor boy/detenu is seen considered on merits, where the Family Court found that the welfare of the ward demands grant of custody to the petitioner/father. It is true that the Family Court took into account the fact that the minor boy/detenu is a US citizen and that he has the right to get his passport renewed, which considerations are, no doubt, quite relevant. However, it appears that the Family Court has gone wrong in observing that the ward was studying at USA and that he has a right to

'continue his studies with his father'. We are of the prime facie opinion that the *pendente lite* custody of the minor boy for a longer duration, enabling his study in the US, depriving the mother of the company of both the children is a matter which requires a deeper and wider consideration, which cannot certainly be wrapped up within the scope of a review petition, which was occasioned due to the specific contingency of non-availability of slots for renewal of passport.

9. However, we do not propose to undertake that exercise within the limited scope of our jurisdiction under Section 8 of the Kerala High Court Act. As of now, we close the writ petition, inasmuch as the child has been produced before this Court pursuant to the orders of this Court. We direct the custody of the minor ward/detenu to be handed over to the petitioner/father per force of Ext.P10 order, which we direct essentially to enable renewal of the passport. Accordingly, the petitioner/father is entitled to take the minor ward/detenu to USA and obtain renewal of passport. It was submitted across the Bar that the bond for Rs.5,00,000/- in terms of clause (d) of

Ext.P10 order has already been executed. The 4<sup>th</sup> respondent shall also handover the passport and other documents pertaining to the minor ward/detenu to the petitioner at the earliest, at any rate, on or before 2.5.2023.

10. We, however, clarify that the continuance of the minor ward/detenu in the US, so as to enable his residence and study there, will be subject to further orders of the regular Bench of the High Court in O.P(FC)No.216/2023.

The writ petition will stand closed with the above directions.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

Sd/-

**C. JAYACHANDRAN  
JUDGE**

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**APPENDIX OF WP (CRL.) 411/2023**

## PETITIONER'S EXHIBITS

Exhibit P1	PHOTOCOPY OF THE OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA
Exhibit P2	PHOTOCOPY OF I A 1/2022 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P3	PHOTOCOPY OF ORDER DATED 22-12-2022 IN I A 1/2022 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA
Exhibit P4	COPY OF U S PASSPORT NUMBER 566055031 OF MINOR WARD NAMELY NIRANJAN R KURUP
Exhibit P5	PHOTOCOPY OF I A 10/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P6	PHOTOCOPY OF I A 12/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P7	PHOTOCOPY OF I A 14/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P8	COMMON ORDER DATE 04-04-2023 IN IA 10/2023, IA12/2023 AND IA 14/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA
Exhibit P9	PHOTOCOPY OF I A 15/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P10	ORDER IN I A 15/2023 DATED 11-04-2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA
Exhibit P11	PHOTOCOPY OF I A 18/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P12	ADVOCATE COMMISSION REPORT DATED 16-04-23

Exhibit P13	PHOTOCOPY OF I A 19/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P14	ORDER IN I A 19/2023 DATED 17-04-2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA
Exhibit P15	PHOTOCOPY OF I A 20/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P16	ORDER IN I A 20/2023 DATED 17-04-2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA
Exhibit P17	PHOTOCOPY OF I A 21/2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA.
Exhibit P18	ORDER IN I A 21/2023 DATED 17-04-2023 IN OP (G&W) 1505/2022 BEFORE THE FAMILY COURT, MAVELIKKARA
Exhibit P19	COPY OF COMPLAINT TO SHO, HARIPPAD DATED 16-04-2023
Exhibit P20	COPY OF RECEIPT NUMBER 15281019-2023-5-00369 DATED 16-04-2023 TO COMPLAINT ADDRESSED TO SHO, HARIPPAD DATED 16-04-2023
Exhibit P21	TRUE COPY OF THE F I R-294/2023 HARIPPADU POLICE STATION