

(2024) 12 KL CK 0063

High Court Of Kerala

Case No: Writ Petition (C) No. 39536 Of 2024

XXXXXXXXXX

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Dec. 13, 2024

Hon'ble Judges: C.S.Dias, J

Bench: Single Bench

Advocate: Muhammed Yasil, M.A.Ahammad Saheer, E.A.Haris, Thajmal Saleek E.V,
Fathima Sherin, Sunil Kumar Kuriakose

Final Decision: Allowed

Judgement

C.S.Dias, J

1. The writ petition is filed, to direct the Child Welfare Committee, Malappuram (2nd respondent) to handover the interim custody of the

petitioner's 16 year old daughter, survivor, who was subjected to sexual assault by the accused in various crimes registered by the Manjeri Police

Station.

2. The petitioner has stated in the writ petition that she is the mother of the survivor. The survivor was subjected to sexual assault by several accused

persons in various crimes registered by the above police. At the time of the incident, the petitioner was employed abroad. As the accused in one of the

crimes is the stepfather of the survivor, the second respondent has refused to handover the custody of the survivor to her grand parents or her

relatives. The petitioner has now returned back to India. Although, she submitted Ext.P1 request for the custody of the survivor, the second

respondent has declined the permission. The petitioner has interacted with the survivor, who has expressed her desire to live with the petitioner. The

survivor is presently housed in the Entry Home, Thavanur. She is suffering severe mental agony and pain. The survivor's continued stay at the

said Entry Home would be prejudicial to the paramount welfare and best interest of the survivor. Hence, the writ petition.

3. When the writ petition came up for consideration on 28.11.2024, this Court directed the child to be produced before the Judicial First Class

Magistrate Court-I, Tirur, for the purpose of ascertaining the views of the survivor.

4. Pursuant to the said order, the learned Magistrate, by communication dated 6.12.2024, has interacted with the survivor and has forwarded her

statement with a report. The survivor has in empathetic terms stated that she desires to live with her mother.

5. Heard; the learned counsel for the petitioner and the learned Government Pleader.

6. On a consideration of the facts and the materials on record, especially taking into account the statement of the survivor recorded by the learned

Magistrate, and that the petitioner is the biological mother of the survivor, I am of the definite view that the interim custody of the survivor is to be

given to the petitioner, which would secure the paramount welfare and best interest of the survivor. Nonetheless, it is directed that under no

circumstances shall the petitioner permit the accused in the crimes to visit the house or school of the survivor and interact with the survivor. The third

respondent shall also ensure that the accused in the crimes do not contact the survivor. The District Child Protection Officer, Malappuram, is directed

to periodically visit the survivor and file progress reports before the second respondent.

In the result, the writ petition is allowed in the following manner:-

(i) The second respondent is directed to handover the custody of the survivor to the petitioner immediately on receipt of the copy of this judgment.

(ii) The third respondent is directed to ensure that the accused in the crimes do not contact the survivor.

(iii) The District Child Protection Officer, Malappuram, is directed to conduct periodical visits to the house and school of the survivor, counsell her and

file progress reports regarding the welfare of the survivor before the second respondent .

(iv).The petitioner shall also ensure the survivor's education is not interrupted.

The writ petition is ordered accordingly.