

**IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE V.G.ARUN**

Friday, the 16<sup>th</sup> day of August 2024 / 25th Sravana, 1946  
WP(C) NO. 29231 OF 2024(D)

**PETITIONERS:**

1. A.N.ANU, AGED 34 YEARS, DAUGHTER OF A C NAVEENAN, 'ANDALATT HOUSE', MADAPLATHURUTH, VADAKKEKKARA, MOOTHAKUNNAM PO, ERNAKULAM, PIN - 683516
2. RADHA NARAYANAN, AGED 69 YEARS, WIFE OF K N NARAYANAN, 'KURUNGATTU', KADACKANADU, MAZHUVANNOOR, AIKARANAD, ERNAKUALAM, PIN - 682311

**RESPONDENTS:**

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, SASTHRI BHAVAN, NEW DELHI, PIN - 110001
2. THE NATIONAL ART AND SURROGACY BOARD, REPRESENTED BY THE EX-OFFICIO VICE CHAIRPERSON, (THE SECRETARY, DEPARTMENT OF HEALTH RESEARCH), DEPARTMENT OF HEALTH RESEARCH, 2ND FLOOR, IRCS BUILDING 1, RED CROSS ROAD, NEW DELHI , PIN - 110001
3. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
4. THE DISTRICT REPRODUCTIVE & CHILD HEALTH ("RCH") OFFICER, DISTRICT MEDICAL OFFICE, ERNAKULAM, PARK AVENUE, MARINE DRIVE, ERNAKULAM, PIN - 682011
5. ASTER MEDCITY, REPRESENTED BY ITS MANAGING DIRECTOR, SOUTH CHITTOOR PO, CHERANALLOOR, ERNAKULAM , PIN - 682027

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to allow the 5th respondent hospital to extract the gametes of Mr.Nishant Narayanan Kurungattu, and cryopreservation of the same for use by the 1st petitioner.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.AKASH S., GIRISH KUMAR M S, SRIVIDYA K & RICHU THERESA ROBERT, Advocates for the petitioners, DEPUTY SOLICITOR GENERAL OF INDIA for respondents 1 & 2 and of GOVERNMENT PLEADER for respondents 3 & 4, the court passed the following:

**V.G.ARUN, J.**

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**W.P.(C.) No.29231 of 2024**

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**Dated this the 16<sup>th</sup> day of August, 2024**

**ORDER**

Admit.

Learned DSGI in-charge takes notice for respondents 1 and 2. The learned Government Pleader takes notice for respondents 3 and 4. Issue notice to the 5<sup>th</sup> respondent through speed post.

2. The facts of this case projects a peculiar situation. The 1<sup>st</sup> petitioner's husband is undergoing treatment at the 5<sup>th</sup> respondent hospital and is in a critical condition. His health condition is worsening day by day. The 1<sup>st</sup> petitioner and her husband are issueless.

3. This writ petition is filed seeking permission to extract and cryopreserve the gametes of the 1<sup>st</sup> petitioner's husband, Mr. Nishant Narayanan, so as to enable her to undergo Assisted Reproductive Technology treatment/procedure for conceiving and

bearing a child using the gametes. The 1<sup>st</sup> petitioner's predicament is that, as per Section 22 (1)(a) of the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter referred to as the 'ART Act'), written informed consent from all parties seeking ART services is required for providing such treatment/procedure.

4. The learned Counsel for the petitioners submitted that there is no possibility of getting written informed consent from the 1<sup>st</sup> petitioner's husband and if the matter is delayed any further, the worst may happen. It is also submitted that the 5<sup>th</sup> respondent is having Level 2 license under the ART (Regulation) Act for extracting and preserving the gametes.

Taking the above factors into consideration, and being guided by equity in the absence of an enabling statutory provision, I find the 1<sup>st</sup> petitioner to be entitled for the interim relief sought. Hence, the 5<sup>th</sup> respondent is permitted to extract the

gametes of Nishant Narayanan, Kurungattu, and cryopreserve the same for use by the 1<sup>st</sup> petitioner. It is made clear that, other than extraction and preservation of the gametes no further procedure under the ART (Regulation) Act shall be undertaken without this court's permission.

Post on 09.09.2024.



**Sd/-**  
**V.G.ARUN**  
**JUDGE**

NB/16-8

**H/O**