



2024:KER:47887

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR. JUSTICE P.M.MANOJ
MONDAY, THE 1ST DAY OF JULY 2024 / 10TH ASHADHA, 1946

WP (CRL.) NO. 704 OF 2024

PETITIONER:

ADITHYA KIRON,
AGED 20 YEARS
S/O KIRON VASUDEVAN RESIDING AT
VADACKUMCHERIL (NRAM-58) PULIYELIPADI,
MANICKAMANGALAM, KALADY P.O ERNAKULAM,
PIN - 683574

BY ADV DHANUJA M.S

RESPONDENTS:

- 1 THE STATION HOUSE OFFICER.
PALARIVATTOM JANAMYTHRIPOLICE STATION,
2834+29C, CIVIL LINE RD, OPPOSITE
PALARIVOTTAMBUSSTOP, PALARIVATTOM JUNCTION,
SONIA NAGAR, PALARIVATTOM, ERNAKULAM, KERALA,
PIN - 682025
- 2 NISAMUDHEEN.S
RESIDING AT ALPHA TUTION CENTER, 1ST FLOOR,
NEAR ANGANWADI, THRIKKOVIL ROAD, NEAR JUMA
MASJID, VENNALA PO, ERNAKULAM 682028, PIN -
682028
- 3 HASEENA V.A,
W/O NISAMUDHEEN S RESIDING AT ALPHA TUTION
CENTER, 1ST FLOOR, NEAR ANGANWADI, THRIKKOVIL
ROAD, NEAR JUMA MASJID, VENNALA PO,
ERNAKULAM, PIN - 682028
- 4 SAHANA NISAM,
D/O NISAMUDHEEN S RESIDING AT ALPHA TUTION
CENTER, 1ST FLOOR, NEAR ANGANWADI, THRIKKOVIL
ROAD, NEAR JUMA MASJID, VENNALA PO,
ERNAKULAM, PIN - 682028



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OTHER PRESENT:

SRI. P M SHAMEER, GP.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 01.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Raja Vijayaraghavan, J.

The petitioner, a close associate and friend of Ms. X (name withheld for privacy), who identifies as a transwoman, has preferred this petition seeking immediate intervention. He asserts that respondents 2, 3, and 4 are the father, mother, and sister respectively of Ms. X. The petitioner states that Ms. X has been subjected to familial violence when Ms. X came out and disclosed her gender identity. Ms. X reportedly sought assistance from Disha, an organization dedicated to safeguarding the rights of individuals like herself, and sought for intervention. When the petitioner became aware of the grievances faced by Ms. X, he is stated to have lodged Ext.P1 complaint with the police.

2. The petitioner asserts that Ms. X has been admitted to Amrita Hospital, Ernakulam, and she has been coerced into signing a consent form under duress. He states that Ms. X, seeking urgent intervention, submitted Ext.P2 complaint electronically to both the police and the Social Welfare Department. The petitioner's grievance centers around the alleged lack of action on these complaints. Furthermore, the petitioner asserts that Ms. X has been threatened with being labeled as mentally ill if she insists on discharge from the hospital. The petitioner



asserts that sexual orientation and gender identity are integral to the personality of Ms. X and alleges that the respondents are attempting to portray her self-defined sexual orientation and gender identity as a sexual perversion and consequently a mental disorder warranting psychiatric treatment. It is on these assertions that this writ petition is filed seeking the following relief:

- i) Issue a writ of habeas corpus or any other appropriate writs, orders or directions commanding the respondents to produce the body of detinue, xxxx, who is held in illegal detention by the respondents 2 to 4 before this Hon'ble Court and set her at liberty.

3. By order dated 27.6.2024, we ordered the production of Ms.X before us. Her parents and sister have also appeared before us. We have interacted with the parties in private and in our chambers.

4. Ms. X stated before us that while assigned male sex at birth, she now identifies as a transwoman. She is 19 years of age, and thus an adult. She alleges that she was admitted to a hospital and coerced into signing a consent form for therapy aimed at altering her gender identity. Furthermore, Ms.X contends that she was administered medication without her informed consent. She states that she is currently pursuing a B.A. in Animation & Graphic Designing at a college. Regarding her living arrangements, Ms.X has expressly communicated her intention to reside



at Jyothis Bhavan, Thrikkakara, and has unequivocally stated her desire not to return to her family residence. She asserted that forcing her to change her gender identity violates her personal autonomy, right to self-determination, and freedom of choice.

5. The parents and sister have stated before us that they do not have any objection to Ms. X expressing herself in the manner she desires. They emphasized that their primary concern is for her safety and for her to be able to complete her education. Furthermore, they expressed no objection to financially supporting Ms. X to enable her to pursue her educational goals. They affirmed that the doors of their home shall always remain open to Ms. X, and she is welcome to join them at any time. They stated that it was when Ms. X displayed aggression towards family members, that they were forced to seek treatment for her. They also highlighted that Ms. X is suffering from gender dysphoria and assured that they would fund her chosen treatment if she decides so.

6. We have considered submissions advanced and have gone through the records. We have also heard the submissions of Smt. Dhanuja M.S, the learned counsel appearing for the petitioner and the learned Government Pleader.



7. We find that Ms.X is a 19-year-old individual. She has stated before us that she is experiencing hostility from her parents and is being forced to undergo treatment to change her identity. After interacting with the parties, we find that Ms.X has made a firm decision to live separately from her parents due to familial violence consequent to her self-determination as a transwoman. In **National Legal Services Authority v. Union of India**¹, the Apex Court recognised the right of transgender persons to decide their self-identified gender. In the context of the legal rights of transgender persons, this Court held that sexual orientation and gender identity are integral parts of their personality. It was held in paragraph 22 of the judgment that each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom. In **Navtej Singh Johar v. Union of India**², it was held by the Apex Court that sexual orientation is innate to a human being. It is an important attribute of one's personality and identity. Homosexuality and bisexuality are natural variants of human sexuality. LGBT persons have little or no choice over their sexual orientation. LGBT persons, like other heterosexual persons, are entitled to their privacy, and the right to lead a

¹ [(2014) 5 SCC 438]

² [(2018) 10 SCC 1]



dignified existence, without fear of persecution. They are entitled to complete autonomy over the most intimate decisions relating to their personal life, including the choice of their partners. Such choices must be protected under Article 21 of the Constitution of India. The right to life and liberty would encompass the right to sexual autonomy, and freedom of expression.

8. We hold that Ms. X, being 19 years of age, has the right to choose how she wishes to live. She has chosen to state before us that she is being subjected to violence by her natal family and she is being forced to suppress her desire for self-determination of her gender identity. It is for the said reason, that she has expressed her desire to live on her own. We are of the view that the choice and desire expressed by her needs to be respected and she should be permitted to live her life on her own terms. However, we wish to record that during our interaction, her parents and sister expressed their deep concern for the health, well-being, and safety of Ms. X and they have graciously offered to support her through these trying times. We also wish to note the submission of her parents that the doors of their home will always remain open to her. They have further requested that, as Ms.X is facing issues related to gender dysphoria, she be allowed to consult a doctor of



her choice. They also stated that if Ms.X chooses to undergo any treatment, they shall finance the same, as at present, Ms.X is unemployed and on her own. Miss X has indicated that the psychiatrist attached to Renai Medicity Hospital is her preferred choice. We leave it there.

This petition is allowed. Ms X is set at liberty. There will be no order as to costs.

sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

sd/-

**P.M.MANOJ,
JUDGE**



APPENDIX OF WP(CRL.) 704/2024

PETITIONER EXHIBITS

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| Exhibit-P1 | A TRUE COPY OF THE COMPLAINT DATED NIL BY THE DETENUE THROUGH ORGANIZATION DHISHA |
| Exhibit-P2 | A TRUE COPY OF THE COMPLAINT DATED 25/6/2024 SENT VIA EMAIL BY THE DETENUE |
| Exhibit-P3 | A TRUE COPY OF THE WHATSAPP MESSAGE FROM THE DETENUE |
| Exhibit-P4 | A TRUE COPY OF THE WHATSAPP MESSAGE FROM THE DETENUE |