



2026:KER:37511

W.P. (Crl.) No. 820 of 2026

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"C.R"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 1ST DAY OF JUNE 2026 / 11TH JYAISHTA, 1948

WP (CRL.) NO. 820 OF 2026

PETITIONER/S:

HAYARUNISA ABDUL HAKKIM
AGED 35 YEARS, D/O ABDUL HAKKIM,
HAFAEEZ VILLA, DECENT VILLA, KALLAMBALAM,
THIRUVANANTHAPURAM DISTRICT, PIN - 695605.

BY ADVS.
SRI.NAVANEETH.N.NATH
SMT.ABHIRAMI S.
SRI.ABDUL LATHEEF P.M.
SMT. KRUPA SAJI
SRI. ARUN GOPI G. L.

RESPONDENTS:

- 1 THE DIRECTOR GENERAL OF POLICE,
STATE POLICE CHIEF HEADQUARTERS, VELLAYAMABALAM,
THIRUVANANTHAPURAM, PIN - 695010.
- 2 STATION HOUSE OFFICER,
KALLMABALAM POLICE STATION,
SALEM-KANYAKUMARI HIGHWAY, MANAMBUR, KARAVARAM,
KALLAMABALAM, THIRUVANANTHAPURAM, PIN - 695605.
- 3 AJEEB, S/O. ASANARU PILLAI,
OWNER OF THASNI BAKERY AND FRUITS,
NEAR KALLARA BUS STAND, KALLARA,
THIRUVANANTHAPURAM, PIN - 695608.

BY ADVS.
SRI. REGINALD VALSALAN
SMT. ANN MARIA FRANCIS



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OTHER PRESENT:

BY PUBLIC PROSECUTOR SRI.K.A.ANAS

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
01.06.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



“C.R”

JUDGMENTDated this the 1st day of June, 2026**Soumen Sen, C.J.**

We have heard Mr. Navaneeth N. Nath, learned counsel for the petitioner, Mr. K.A. Anas, learned Public Prosecutor for respondents 1 and 2 and Mr. Reginald Valsalan, learned counsel for the 3rd respondent.

2. This Habeas Corpus petition has been filed by the mother, the natural guardian of the minor child, inter alia on the ground that despite a decree passed by the Family Court granting permanent custody to her, the father of the child illegally removed the child from her custody while the child was in school and without informing her. It is prayed that the child be returned to the mother in terms of the decree of the Family Court. Although it was open to the mother to seek execution of the decree of the Family Court, she has filed the present petition in the nature of Habeas Corpus seeking custody of the child.



3. We have independently interacted with the minor, the father and mother of the minor and also the minor in the presence of his father and mother separately. The minor, in his interaction with us, clearly expressed his desire to be with the mother, although he initially stated that he would like to go with the father, which, in our view, does not appear to have been a statement made in free will. Moreover, there can be no doubt that the father had taken custody of the child in violation of the decree passed by the Family Court.

4. It has been contended by the father that the child had complained about the mother while he was interacting with the child at the school. However, the father ought to have filed an application for modification of the compromise decree and could not have taken the law into his own hands by removing the child from the custody of the mother, in utter violation of the decree. There may be circumstances warranting modification of a decree or order passed by the Family Court; however, the due legal process must be followed.

5. The learned counsel for the father had read out one of



the orders passed in the pending execution application filed by the father, wherein it was alleged that the father was not being allowed access to the child and the visitation rights clearly provided in the compromise decree. In the said order, the Family Court appears to have observed that the child may be returned to the mother after the minor stays with the father for a few days. The said order was passed on 24th April, 2026. More than a month had passed, but the child was not returned to the mother. The said order was passed on 24th April 2026. More than a month has elapsed, but the child has not been returned to the mother.

6. This petition was filed on 24th May 2026. We are of the prima facie view that the father acted in breach of the assurance given to the Family Court by failing to return the child to the mother. It is unfortunate that the child is being treated like a pawn in the hands of the parents. The parents are not expected to behave irresponsibly. In our view, the child should now be returned to the mother, who shall continue to be the guardian of the child unless and until the order of the Family Court is modified.



7. We, however, make it clear that the observations made in this order shall not influence the execution proceedings pending before the Family Court. We further make it clear that keeping in view the welfare of the child, the Family Court may pass appropriate direction taking into consideration the Guidelines (for child access, child custody along with parental plan) as formulated with the participation of several stakeholders and approved by the Calcutta High Court on 23rd September, 2025 in W.P.A (P) 257 of 2021 (Ayushman Initiative for Child Rights) and W.P.A.(P) 166 of 2022 (Antara). This comprehensive child access and custody guidelines along with the parenting plan may for the time being be followed by the Family Courts in Kerala till the committee constituted to consider the said plan has finally placed its recommendations.

8. Keeping in mind the welfare of the child, we also direct the Child Welfare Officer to file a social investigation report with regard to the child in the pending execution proceedings for the court to pass appropriate orders. It is needless to mention that all the terms of the compromise decree as it stands shall be strictly followed by the parents. The child is present in court



and his custody is given to the mother in court itself.

9. We have been informed that the mediation is pending in respect of a matrimonial dispute between the parties. We hold and trust that the parties would take an informed decision in the said proceedings, keeping in mind the welfare of the child. The Registrar General is directed to circulate the guidelines (for child access, child custody along with parental plan) to all the District Judges, Family Courts, and Magistrates in the State exercising jurisdiction in the matters relating to custody, matrimonial dispute and Protection of Women from Domestic Violence Act, 2005, to be applied by the said courts till the Rules are made by the Rule Committee and approved.

The petition is disposed of.

Sd/-
Soumen Sen
Chief Justice

Sd/-
Syam Kumar V.M.
Judge



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APPENDIX OF WP (CRL.) NO. 820 OF 2026

PETITIONER'S EXHIBITS:-

EXHIBIT P-1 FREE COPY OF THE DECREE PASSED BY THE HONORABLE FAMILY COURT ATTINGAL DATED 24.06.2025 IN OP (G & W) NO. 529/2025 ALONG WITH COMPROMISE PETITION.

EXHIBIT P-2 A TRUE COPY OF THE COMPLAINT PREFERRED BEFORE THE 2ND RESPONDENT DATED 11.04.2026.

EXHIBIT P-3 A TRUE COPY OF THE ACKNOWLEDGMENT/EVIDENCE PERTAINING TO THE SAID COMPLAINT DATED 13.04.2026.

RESPONDENTS' EXHIBITS:-

EXHIBIT-R3 (B) TRUE COPY OF THE EA NO.1 OF 2026 IN EP NO.6 OF 2026 IN OP (GW) NO.529 OF 2026 FILED BEFORE THE FAMILY COURT, ATTINGAL ALONG WITH AFFIDAVIT

EXHIBIT-R3 (A) TRUE COPY OF THE EXECUTION PETITION NO.6 OF 2026 IN OP (GW) NO.529 OF 2025 FILED BEFORE THE FAMILY COURT ATTINGAL.

EXHIBIT-R3 (C) TRUE COPY OF THE EA NO.3 OF 2026 IN EP NO.6 OF 2026 IN OP (GW) NO.529 OF 2026 FILED BEFORE THE FAMILY COURT, ATTINGAL.

EXHIBIT-R3 (D) TRUE COPY OF THE EA NO.5 OF 2026 IN EP NO.6 OF 2026 IN OP (GW) NO.529 OF 2026 FILED BEFORE THE FAMILY COURT, ATTINGAL ALONG WITH AFFIDAVIT.

EXHIBIT-R3 (E) TRUE COPY OF THE SCREEN SHORT OF THE ORDER DATED 24.4.2026 PASSED BY THE FAMILY COURT ATTINGAL IN EP NO.6 OF 2026 IN OP (GW) NO.529 OF 2026 TAKEN FROM THE E-COURT SERVICES APPLICATION.

EXHIBIT-R3 (F) TRUE COPY OF THE SCREEN SHORT OF THE ORDER DATED 30.4.2026 PASSED BY THE FAMILY COURT ATTINGAL IN EP NO.6 OF 2026 IN OP (GW) NO.529 OF 2026 TAKEN FROM THE E-COURT SERVICES APPLICATION.