

ITEM NO.806

COURT NO.1

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 5027/2023

(Arising out of impugned final judgment and order dated 13-01-2023 in WPCRL No. 28/2023 passed by the High Court of Kerala at Ernakulam)

DEVU G.

Petitioner(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

Date : 06-02-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Sriram Parakkat, Adv.
Mr. M.S. Vishnu Sankar, Adv.
Ms. Athira G Nair, Adv.
Mr. Aditya Santhosh, Adv.
Mr. Arislal Sainu, Adv.
Mr. Joseph D Tharrayil, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1 In a petition under Article 226 of the Constitution seeking a writ of *habeas corpus*, the High Court passed an order on 13 January 2023 requiring the Secretary of the District Legal Services Authority¹, Kollam to visit the residence of the fourth and fifth respondents and to record the statement of the detenu, who is the daughter of the said respondents and to ascertain as to whether she is under their illegal detention. The High Court directed that if the statement indicates that she is under illegal detention, then she shall be produced before the High Court on 19 January 2023. On the other hand, the High Court observed

1 "DLSA"

that if the statement of the detenu indicated that she is not under illegal detention, there would be no need to produce her before the High Court.

- 2 By a further order of 2 February 2023, the High Court directed that the detenu shall have to attend a counselling session in an authorized counselling centre over the next four or five days and the proceedings have been listed on 16 February 2023.
- 3 Counsel appearing on behalf of the petitioner submits that the petitioner and the detenu are in a same sex relationship and the order of the High Court directing that the statement of the detenu should be recorded by the Secretary of the DLSA when she was under the confines of her parents would not serve the purpose. Moreover, it has been submitted that the direction of the High Court for the detenu to attend counselling sessions is fundamentally erroneous.
- 4 Issue notice.
- 5 In the meantime, we direct the fourth and fifth respondents, by way of an *ad interim* order, to produce the detenu before the Family Court at Kollam by 5 pm on 8 February 2023. The Principal Judge of the Family Court shall arrange for an interview of the detenu with Ms Saleena V G Nair, a Member of the E-Committee of the Supreme Court, who is a senior judicial officer from the State of Kerala. The interview shall be arranged in consultation with the Principal Judge of the Family Court.
- 6 The officer shall after interacting with the detenu submit a report after ascertaining her wishes and on whether she is voluntarily residing with her parents or is kept under illegal detention. The Principal Judge of the Family Court and Ms Saleena shall ensure that the statement of the detenu is recorded in a fair and free manner without any coercion or duress from the parents.

- 7 The report shall be submitted to this Court in a sealed cover before the next date of listing.
- 8 In the meantime, there shall be a stay of the orders of the High Court dated 13 January 2023 and 2 February 2023. There shall also be a stay of further proceedings before the High Court till the next date of listing.
- 9 List the Special Leave Petition on 17 February 2023.
- 10 Copies of the order shall be furnished to the judicial officers referred to in para 5 above by the Registry of this Court.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR