

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W P(C) No

of 2021

**Bindu Sampath**

**Petitioner**

**Union of India and others**

### Respondents

## INDEX

Sl No	Description	Pages
1	Synopsis	1 - 2
2	Memorandum of Writ Petition (C)	1 - 18.
3	Affidavit	19
4	Ext. P-1 Copy of the Unlawful Activities (Prevention) Tribunal Report dated 11/05/2017	20 - 57.
5	Ext. P-2 True Copy of the Missing Person Report dated 09/11/2015 alongwith English Translation	58 - 59.
5	Ext. P-3. True Copy of the judgement dated 25/11/2015 in W.P (Crl) 468 of 2015	60 - 66.
6	Ext. P-4. Screenshot of the NIA Website Most Wanted List	67 - 70.
7	Ext P-5 True Copy of the Extradition Treaty between the Republic of India and Islamic Republic of Afghanistan	71 - 85
8	Ext. P-6 True Copy of the Letter dated 10/07/2017 bearing MEA ID No JD-II/415/15 2017	86
9	Ext P-7 True Copy of the order dated 05-07 2017 in W P (Crl ) 237 2017	87 - 88.
10	Ext P-8 True Copy of the order dated 13-04-2018 in W P (Crl.) 183/2018	89.
11	Ext. P-9 True Copy of the Letter bearing no 3400/EAM/2018 dated 19/04/2018	90
12	Ext. P-10. True Copy of The Hindu Article dated 19/09/2018	91 - 94.
13	Ext. P-11: Screenshot of the Madad Portal detailing the inquiry into Grievance bearing ID AF6WHU103181818	95 - 96.
14	Ext. P-12 True Copy of the Relevant Portion of the Indian Passport	97.
15	Ext. P-13 True Copies of the UDHR, ICCPR and CRC	98 - 146.
16	Ext P-14 (a) True Copy of ANI News Report dated 14/07/2021	147 - 148
17	Ext P-14 (b) True Copy of Al Jazeera Article dated 12/07/2021	149 - 151.
18	Ext P-14 (c). True Copy of Al Jazeera Article dated 08/07/2021	152 - 154.
19	Ext. P-15. True Copy of The Hindu Article dated 11/07/2021	155 - 157.

20	Ext P-16: True Copy of the Vienna Convention on Consular Relations 1963	158 - 186.
21	Ext. P-17 (a) True Copy of The Hindu Article dated 16/03/2020	187 - 189.
22	Ext. P-17 (b): True Copy of India Today Article dated 29/11/2019	190 - 191.
23	Ext P-17 (c) True Copy of The Week Article dated 12/06/2021	192 - 193.
24	Ext P-17 (d) True Copy of The Hindu Article dated 11/06/2021	194 - 197.
25	Ext P-18 True Copy of the judgement dated 13/07/2021 in W P (Cri ) 178 of 2021	198 - 200.
25	Vakalath	

---

Dated this the 16<sup>th</sup> day of July 2021

Sunil J Mathews/ Col Armit Kumar (Retd.)  
Counsel for the petitioner

WPS Office

i

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**

W P(C) No

of 2021

Bindu Sampath

Petitioner

Union of India and others  
Respondents

**S Y N O P S I S**

The Writ Petition is filed by the Petitioner praying for urgent directions from this Hon ble Court to the Respondent No 1 and 2 in respect of the return and repatriation of her daughter and granddaughter who are presently detained in a Maximum Security Prison in Afghanistan. The daughter of the Petitioner, namely Nimisha @ Fatima Isa is an Indian citizen who was taken outside India by her husband to live under the Islamic State. After the killing of the leader of the Islamic State, Abu Bakr al-Baghdadi, the daughter of the Petitioner surrendered to the Afghan authorities alongwith several other Indian citizens. The Petitioner strongly believes that her daughter was brainwashed and unduly influenced into associating with the Islamic State.

The Petitioner has been running from pillar to post since 2015 but has failed to receive any aid or support from the Respondent Nos 1 to 3. According to various media reports, since November 2019, the daughter of the Petitioner has been detained in a prison in Afghanistan alongwith her minor daughter. However till now, no concrete steps have been taken by the Respondents particularly Respondent No 1 and 2, to ensure their return and repatriation safely back to India. The failure to ensure the safe return and repatriation of Indian citizens including a minor child under the age of five stands directly in the teeth of moral and legal obligations of a nation-state towards its citizens as well as the various International Conventions to which India is a party.

The Respondents, in particular the Respondent No 1 and 2, have failed to establish any grounds for the abandonment of Indian citizens, and all such illegal actions are violative of the Fundamental Rights of the Indian Citizens as well as the International Covenants signed and ratified by India, and the moral and legal obligation of the Respondents towards all Indian citizens. Hence the Writ Petition.

**LIST OF DATES & EVENTS**

1	26/01/1950	India adopted the Universal Declaration on Human Rights into domestic law in the form of Fundamental Rights enshrined in Part III of the Constitution of India
2	27/03/1979	India ratified the International Convention of Civil and Political Rights
3	11/12/1992	India ratified the International Convention on the Rights of Child
4	28/09/1993	India adopted the International Convention on Civil and Political Rights into domestic law by commencing the operation of the Protection of Human Rights Act, 1993
5	15/02/2007	India adopted the International Convention on the Rights of Child into domestic law by commencing the operation of the Commission for Protection of Child Rights Act, 2005
6	07/11/2015	Nimisha went missing from her college and the Petitioner was unable to contact her
7	09/11/2015	The Petitioner came to know that Nimisha had converted to Islam and was planning to get married. The Petitioner's husband lodged a Missing Person Report in the Vidhyanagar Police Station, Kasargod in respect of the whereabouts of Nimisha
8	11/11/2015	Nimisha was located and presented before the Learned Judicial Magistrate, Kasargod and set at liberty
9	16/11/2015	The Petitioner filed a Writ Petition bearing W P (Crl) No 468/2015 before the Hon'ble Kerala High Court seeking relief of habeas corpus and mandamus for production of Nimisha, her husband Bexen, and investigation into the conversion of Nimisha
10	25/11/2015	The Hon'ble Kerala High Court was pleased to dismiss the matter on the ground that Nimisha had married voluntarily and being a major, had the right to be set at liberty
11	15/05/2016	Nimisha and Bexen informed the Petitioner that they were travelling to Sri Lanka to open a business
12	17/05/2016	Nimisha and Bexen travelled to Sri Lanka
13	23/06/2016	The Petitioner came to know that Nimisha and Bexen were planning to travel to Afghanistan



14	07/07/2016	News of 21 Indian citizens travelling to Afghanistan to join ISIS broke out In the list of 21 Indians, the Petitioner saw the photos and names of Nimisha and Bexen
15	June- July 2016	Nimisha gave birth to a girl child, named Ummu Kulusu
16	09/07/2016	The Petitioner promptly reported to the police and an FIR bearing number 699/2016 was registered by the Kerala Police against the 21 Indian citizens, including Nimisha under Section Sections 120 B, 125 IPC, Section 57 of KP Act & Sections 13,38 and 39 of the UA(P) Act, 1967
17	17/08/2016	The Respondent No 1 issued Order bearing No 11011/23/2016-IS IV instructing the National Investigating Agency to take cognizance of the matter
18	24/08/2016	National Investigating Agency re-registered the FIR as RC-03/2016/NIA/Kochi and a Red Corner Notice was issued by the International Criminal Police Organization (INTERPOL)
19	29/05/2017	The Petitioner wrote a letter to the Hon'ble Prime Minister seeking aid in the return of Nimisha
20	16/06/2017	The Petitioner filed a Writ Petition in Hon'ble Kerala High Court bearing W P (Cil) No 237/2017 seeking relief of Habeas Corpus and Mandamus seeking the repatriation and production of Nimisha, Bexen and Ummu Kulusu and their safe return to India
21	05/07/2017	The Petitioner withdrew the Writ Petition without prejudice to seek appropriate reliefs
22	10/07/2017	The Petitioner received a response from the PAI Division, Ministry of External Affairs vide Letter bearing MEA ID No JD-II/415/15/2017 stating that they had no information of Nimisha travelling to Afghanistan
23	October 2017	The Petitioner moved an application for Impleadment in S L P (Cil) No 5777/2017 titled Shafin Iahan v Asokan K M & Ois , however, leave was not granted before the Hon'ble Supreme Court of India

24	27/10/2017	The Petitioner filed Writ Petition in the Hon'ble Supreme Court of India bearing W P (Crl ) 183/2017
25	04/04/2018	The Respondent No 1 issued a Letter bearing no MOS (H)/PS/MHA/2018/122/250 dated 04/04/2018 to the Respondent No 2 for taking note of the grievance of the Petitioner
26	11/04/2018	A Grievance was registered on the Madad portal of the Respondent No 1 bearing Grievance ID AF6WHU103181818
27	13/04/2018	The Petitioner withdrew the Writ Petition with liberty to file a better drafted writ
28	19/04/2018	The Respondent No 2 reported the same to the Respondent No 1 vide Letter bearing no 3400/EAM/2018
29	29/10/2019	Abu Bakr-al-Baghdadi, the leader of ISIS was killed by the United States Armed Forces
30	15/11/2019	According to media reports, a group of 10 women and 21 children, including Nimisha and Ummu Kulusu surrendered to the Afghan authorities
31	15/03/2020	StratNewsGlobal released the documentary titled ' <i>Khorasan Files: The Journey of Indian 'Islamic State' Widows</i> ' on the interviews conducted with Nimisha and 3 other Indian women detained by Afghan authorities
32	June 2021	News reports emerged stating that the Respondents No 1 and 2 have denied Afghanistan's request for deportation of Indian women and children
33	30/06/2021	The Petitioner filed a Writ Petition bearing WP (Crl ) No 178 of 2021 seeking a relief of habeas corpus against the Respondents alongwith other reliefs
34	13/07/2021	The Petitioner withdrew the Writ Petition bearing WP (Crl ) No 178 of 2021 with liberty to file a more appropriate Writ Petition, which liberty was granted by the Hon'ble Court
35	___/07/2021	Hence the present petition seeking only the relief of mandamus against the Respondents to ensure the speedy return of the Petitioner's daughter and granddaughter

5

**Act referred**

Constitution of India, 1950 Protection of Human Rights Act, 1993, Commission for Rights of Child Act, 2005, Universal Declaration of Human Rights, 1948, International Convention on Civil and Political Rights, 1966 International Convention on the Rights of Child 1989

Dated this the <sup>th</sup> 16 day of July 2021

Sunil J Mathews/ Col Amit Kumar (Retd )  
Counsel for the Petitioner

WPS Office

1

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

W P (C) No                      of 2021

**PETITIONER -**

Bindu Sampath, W/o Sampath R  
ARA 104/105, Thekkeveedu,  
Landmark -Binduzz Bindal Makeover Saloon  
Attukal, Manacaud P O, Tiruvandrum 695009

**RESPONDENTS -**

- 1 Union of India through its Secretary, Ministry of Home Affairs,  
North Block, Central Secretariat, New Delhi, Delhi- 110 001
- 2 Union of India through its Secretary, Ministry of External Affairs,  
South Block, Central Secretariat, New Delhi, Delhi- 110 001
- 3 State of Kerala through its Chief Secretary  
Central Stadium, MG Road, Palayam,  
Thiruvananthapuram, Kerala- 695 001
- 4 Kerala State Human Rights Commission  
Turbo Plus Tower PMG Junction,  
Thiruvananthapuram, Kerala- 695 033
- 5 Kerala State Commission for Protection of Child Rights  
Sree Ganesh, Vaniyass Junction Near Bakery Junction,  
Thiruvananthapuram- 695 034

The Address for service of notice on the Petitioner is that of her Counsel Sunil J Mathews Col Amit Kumar (Retd ), Advocates Ch 114, RK Jain Block, Supreme Court of India New Delhi- 110001

The address for service of notice on the Respondents is shown in the above or on their counsels if engaged

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA**



**STATEMENTS OF FACTS**

- 1 The present Writ Petition has been filed for the purpose of seeking urgent directions from this Hon'ble Court to the Respondents, in particular, the Respondent No 1 and 2, to take expeditious steps to bring back, from the Islamic Republic of Afghanistan, a woman and child, namely, Nimisha @ Fatima Isa and Ummu Kulusu presently aged around 4 years. The said woman and child are citizens of India and are from the State of Kerala, the Respondent No 3.
- 2 The Petitioner is a law-abiding Indian citizen, and the mother of Nimisha @ Fatima Isa and grandmother of the minor child of Nimisha @ Fatima Isa. The Petitioner has been running from pillar to post, seeking the urgent intervention and aid of the Respondents in securing the return and repatriation of Nimisha @ Fatima Isa (hereinafter referred to as "Nimisha") and her minor daughter who are presently detained in Pul-e-Charkhi Prison situated in Kabul, Afghanistan.
- 3 The Petitioner single-handedly brought up her two children, an elder son, currently serving as a Major in the Indian Army, and Nimisha, a Dental Doctor, who was systematically brainwashed and radicalized by a nexus of Islamic Radicals led by the absconding Dr. Zakir Abdul Karim Naik.
- 4 After completing her schooling, Nimisha began attending coaching for preparation of medical studies at Zephyr Entrance Coaching, Thiruvananthapuram, Kerala. During her coaching, she met one Sajjad Rahman (hereinafter referred to as "Sajjad"), who introduced her to Islam. Sajjad joined JIPMER, Puducherry for MBBS, and Nimisha joined Century Dental College, Kasaragod for BDS. Over time, the two got close to each other and during the third year of her BDS, Nimisha agreed to convert to Islam, with the hopes of getting married to Sajjad. Nimisha converted to Islam at the Salaafi Centre, Statue Junction, Thiruvananthapuram without the consent or knowledge of her parents or family and adopted the name 'Fatima Nimisha'. As a consequence of the relationship between Sajjad and Nimisha, Nimisha conceived. However, Nimisha underwent termination of the pregnancy soon after discovering the pregnancy.

Thereafter, Sajjad cut off all ties and abandoned Nimisha causing her to fall prey to depression, further increasing her vulnerability and susceptibility to brainwashing

- 5 During her studies she met a senior, Riphala @ Raffaela (hereinafter referred to as 'Riphala'), who is also presently detained in Afghanistan along with her child. Riphala became a confidant and friend to Nimisha during the course of her studies. After the disappearance of Sajjad, Riphala introduced Nimisha to Meen Jacob Pallath @ Mariam Jacob Pinth (hereinafter referred to as 'Meen'), the wife of Bestin Vincent @ Yahya (hereinafter referred to as 'Bestin'). Meen, Bestin and Bestin's brother, Bexen Vincent @ Isa (hereinafter referred to as 'Bexen') were all Christians who had converted to Islam. They had been brainwashed to believe that converted Muslims could only marry other converts, and not Pure Muslims. Meen and Bestin were looking for a converted Muslim girl to marry Bexen and Riphala introduced them to Nimisha as a potential match for Bexen. Nimisha began attending the sermons of Abdul Rashid @ Abdulla, a Religious Preacher for Peace International School, Kozhikode along with the aforesaid persons. Abdul Rashid was later revealed to be a mastermind behind the conversion and brainwashing of over 21 Indian nationals who joined ISIS. This aspect about Abdul Rashid is borne out of Red Corner Notice issued by the International Criminal Police Organization (hereinafter referred to as 'INTERPOL'). The Red Corner Notice has not been made available as a public record by INTERPOL or NIA.
- 6 In fact, according to a Report of the Unlawful Activities (Prevention) Tribunal dated 11/05/2017 (hereinafter referred to as the "UAPT Report") on the Islamic Research Foundation, the conversion of Meen, Bestin, Bexen and Nimisha has been linked with the absconding proselytizer and radical Dr. Zakir Abdul Karim Naik. According to various media reports, Abdul Rashid @ Abdulla had been closely linked with Dr. Zakir Naik, and his name has also been noted in the aforesaid Report dated 11/05/2017. A Copy of the Unlawful Activities (Prevention) Tribunal Report dated 11/05/2017 has been annexed herewith and marked as Ext P-1.
- 7 Soon after the abortion and meeting with Bexen, Nimisha got engrossed in the ideology propagated by Abdul Rashid Abdulla and Dr. Zakir Naik. The brainwashing

of Nimisha was greatly accelerated by the depression of abortion, the sudden disappearance of Dr. Sajjad Rahman, and meeting with fellow converts, Merin, Bestin and Bexen. This continued for several months as Nimisha entered into her final year of dental studies. Around September 2015, when Nimisha was still in her final year, she got pregnant for a second time this time with Bexen. The couple got married in secret at Payyannur, Kannur, Kerala in October 2015.

- 8 Around November 2015, Nimisha broke off all contact with the Petitioner. On 09/11/2015, the Petitioner came to know that Nimisha had converted to Islam and was getting married. Thereafter, no contact could be established with Nimisha, and her phone had been switched off. The Petitioner's husband- the stepfather of Nimisha, lodged a Missing Person Report on 09/11/2015 stating that Nimisha had been missing since 07/11/2015. A True Copy of the Missing Person Report dated 09/11/2015 along with English Translation has been annexed herewith and marked as Ext P-2.
- 9 Thereafter, the police conducted inquiry and found Nimisha in Kasaigod, Kerala on 10/11/2015. After finding Nimisha, the Petitioner was called to the Vidhyanagar Police Station on 11/11/2015, and Nimisha was produced before the Learned Judicial Magistrate, Kasaigod, Kerala. The Magistrate ruled that since Nimisha was above the age of 18 she had the right to choose her place of residence and she was set at liberty. It was revealed to the Petitioner that Nimisha had already married Bexen in October 2015 and had begun residing in Pallakad along with the family of Bexen.
- 10 Since then, the Petitioner and Nimisha had not been in contact. The Petitioner was gravely concerned about the safety and wellbeing of her daughter. Accordingly, she filed a Habeas Corpus Petition bearing Writ Petition (Criminal) No. 468 of 2015 before this Hon'ble Court on 16/11/2015. In the said Writ Petition, the Petitioner sought the relief of Habeas Corpus for production of Nimisha and the relief of Mandamus for investigation into the forced conversion and marriage of Nimisha. The Hon'ble Court was pleased to dismiss the Petition on 25/11/2015, on the ground that Nimisha had voluntarily married Bexen and was not being held against the will. A True Copy of the judgement dated 25/11/2015 in W P (Cr) 468 of 2015 has been annexed herewith and marked as Ext P-3.



- 11 The Petitioner had extremely limited contact with her daughter since the decision of the Hon'ble Court, and the brainwashed Nimisha did not remain in regular communication. Whatever limited contact had been maintained by Nimisha was through text messages only. In early 2016, the Petitioner learnt that Nimisha had conceived a child.
- 12 Around 15<sup>th</sup> May 2016, when Nimisha was seven months pregnant, the Petitioner was informed by Nimisha and Bexen that they were moving to Sri Lanka to start a business and on 17/05/2016 they left India. After moving to Sri Lanka, Nimisha remained in contact with the Petitioner, till around the end of May 2016. The Petitioner was worried about the wellbeing of her daughter and concerned about the abrupt halt in all communication and decided to approach the relevant authorities.
- 13 The Petitioner met one Ms. Sreelekha, IPS, then serving as the Additional Director General of Police, Kerala Police, around the first week of June 2016 but did not receive any aid or attention. It is suspected that around this time, Nimisha also gave birth to a daughter, named Ummu Kulusu.
- 14 On 23/06/2016, the parents of Bexen informed the Petitioner that the young couple was travelling to Afghanistan. Since then, the Petitioner had been trying to establish contact with Nimisha, and also get audience with the relevant officers and ministers of the Respondents seeking and begging for their aid in the return of Nimisha to India. However, neither any contact with Nimisha nor any response from the government and its agencies was forthcoming.
- 15 Around 07/07/2016, news broke of 21 Indian nationals from Kerala had travelled to Afghanistan to join ISIS. The Petitioner also saw the name and photograph of Nimisha and Bexen in the news and in print media. The Petitioner promptly reported to the police and a FIR bearing number 699/2016 dated 09/07/2016 was registered by the Kerala Police against the 21 Indian nationals who had travelled to Afghanistan to join ISIS under Sections 120 B, 125 IPC, Section 57 of KP Act & sections 13, 38 and 39 of the UA(P) Act, 1967. Since then, it has also come to public attention that the FIR



was re-registered by the National Investigating Agency on 24/08/2016 bearing no RC-03/2016/NIA/KOC. The National Investigating Agency took cognizance pursuant to the Ministry of Home Affairs Order bearing No. 11011/23/2016-IS IV dated 17th Aug, 2016. It has also come to public notice that an Interpol Red Corner Notice has been issued in the name of Nimisha @ Fatima Isa, which essentially means that the arresting/ detaining country is bound by International Law to extradite her to India for prosecution by Indian Courts, as per Indian Laws. At present, Nimisha is on the Most Wanted List of the NIA and her current status is noted as 'Absconding'. A Screenshot of the NIA Website Most Wanted List has been annexed herewith and marked as Ext P-4.

- 16 The INTERPOL does not issue any notice at its own volition and all notices are issued at the behest of the concerned country in specific cases of extreme national importance and in compliance with the rules and regulations of INTERPOL. It is not an ordinary or regular document and is issued sparingly in specific cases. There are several forms of Corner Notices, most commonly used Notices are, Red Corner Notice and Yellow Corner Notice. While Yellow Corner Notice serves as an International Missing Person Report, a Red Corner Notice has been defined as follows:

*A Red Notice is a request to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action.*

*It contains two main types of information:*

- *Information to identify the wanted person, such as their name, date of birth, nationality, hair and eye colour, photographs and fingerprints if available.*
- *Information related to the crime they are wanted for, which can typically be murder, rape, child abuse or armed robbery.*

*Red Notices are published by INTERPOL at the request of a member country, and must comply with INTERPOL's Constitution and Rules. A Red Notice is not an international arrest warrant."*

- 17 Hence, it is evident that, subject to a bilateral treaty for extradition, any person named in an Interpol Red Corner Notice must be provisionally arrested or otherwise detained after surrender till extradited to the Requesting Country. A provisional arrest in its

natural sense connotes an arrest or detention which is merely temporary in nature. In the present case, there is an existing Bilateral Extradition Treaty entered into on 14/09/2016 and in force since 24/11/2019 after ratification by both countries. Hence, in line with the INTERPOL Red Corner Notice, the Respondent No. 1 in coordination with the Respondent No. 2, is bound to take the necessary steps to effect extradition of the concerned accused persons. A True Copy of the Extradition Treaty between the Republic of India and Islamic Republic of Afghanistan has been annexed herewith and marked as Ext P-5.

- 18 After failing to receive any aid whatsoever from the relevant authorities, the Petitioner was left with no other option than to approach the Hon'ble Prime Minister and relevant Cabinet Ministers. Accordingly, she wrote a Letter dated 29/05/2017 to the Hon'ble Prime Minister, seeking his aid and intervention in securing the rescue and return of Nimisha. She received a response dated 10/07/2017, under the hand of the Under Secretary (AI), Pakistan, Afghanistan and Iran Division, Ministry of External Affairs, stating that there was no information of Nimisha travelling to Afghanistan alongwith the Indians who had gone there to join the 'Daesh'. A True Copy of the Letter dated 10/07/2017 bearing MEA ID No. JD-II/415/15/2017 has been annexed herewith and marked as Ext P-6.
- 19 It is pertinent to note that the Respondents failed to undertake due diligence in confirming the whereabouts or even conducting a basic enquiry regarding information held by the government or its departments, in respect of Nimisha. In this regard, attention is drawn to the fact that the NIA had lodged an FIR against Nimisha on the charge of travelling to Afghanistan on 24/08/2016, as also evidenced by the Report of the Unlawful Activities (Prevention) Tribunal dated 11/05/2017 on the Islamic Research Foundation, however, according to the response of the Respondent No. 2 dated 10/07/2017, the government did not have any information regarding Nimisha travelling to Afghanistan. In a case involving the rights and wellbeing of an Indian citizen, the Respondents cannot take a lackadaisical approach.

- 20 In the meantime, while the Petitioner was awaiting the response from the Hon'ble Prime Minister's Office, she filed another Writ Petition in the Kerala High Court bearing Writ Petition (Criminal) No 237 of 2017 seeking the relief of Habeas Corpus compelling the production of Nimisha Bexen and their infant daughter and the relief of Mandamus for ensuring their safe transit to India. The said Writ Petition was filed on 19/06/2017 and was subsequently withdrawn by the Petitioner on 05/07/2017. A True Copy of the order dated 05/07/2017 in W P (Crl) 237/2017 has been annexed herein and marked as Ext P-7.
- 21 Thereafter, the Petitioner moved the Hon'ble Supreme Court of India seeking impleadment as a Respondent in Special Leave Petition (Criminal) 5777 of 2017 titled Shafin Iahan v Asokan K M & Ors. However, leave was not granted to the Petitioner. The Petitioner also filed Writ Petition (Crl) No 183 of 2017 titled Bindu Sampath v Union of India & Ors which was withdrawn with leave to file a better drafted petition vide order dated 13/04/2018. A True Copy of the order dated 13/04/2018 in W P (Crl) 183/2018 has been annexed herewith and marked as Ext P-8.
- 22 Thereafter, the Petitioner approached the Respondent No 1, seeking aid in the return of Nimisha. Thereafter, the Respondent No 1 issued a Letter bearing no MOS (H)/PS/MHA/2018/122/250 dated 04/04/2018 to the Respondent No 2. Based on the letter of the MOS Home Ministry a Grievance was registered on the Madad portal of the Respondent No 1 bearing Grievance ID AF6WHU103181818 on 11/04/2018. Thereafter, the Respondent No 2 reported the same to the Respondent No 1 vide Letter bearing no 3400/EAM/2018 dated 19/04/2018. A True Copy of the Letter bearing no 3400/EAM/2018 dated 19/04/2018 has been annexed herewith and marked as Ext P-9.
- 23 It is pertinent to note that around September 2018, an Indian citizen and resident of the Respondent No 3, named Nishadul Hamzafai, who had also joined ISIS as a fighter was arrested by the Afghan authorities, deported and arrested by the National Investigating Authority upon arrival at New Delhi. According to media reports, Nishadul Hamzafai was a college friend of Bestin, and was closely connected with the group of 21 men and women from Kerala which included Nimisha. However,



Nishadul had travelled to Khorasan after the group comprising of Nimisha had already reached Khorasan. Despite his arrest by the Afghanistan authorities, he was deported to India for prosecution. A True Copy of The Hindu Article regarding arrest of Nishadul Hamzafar dated 19/09/2018 has been annexed herewith and marked as Ext P-10

- 24 Over the course of 2019, the combined global offensive against the Islamic State proved successful as the 'Daesh' was slowly rooted out of its strongholds. During this period, the leader of the 'Daesh', Abu Bakr al-Baghdadi was also killed by the United States Armed Forces. Soon after the death of al-Baghdadi around 29<sup>th</sup> October 2019, the Islamic State fell, and the widowed women and orphaned children were moved from their camps.
- 25 According to various media reports, in particular, a report of The Hindu dated 16/03/2020, Nimisha and Unmu Kulusu formed part of one such group of 10 women and 21 children that moved from Khorasan, Afghanistan to Nangarhar, a province near Kabul. On 15/11/2019, the group surrendered to the Afghanistan authorities and were detained.
- 26 It is submitted that since their surrender, the women have been detained by the Afghan authorities. Around December 2019, a group of 4 women from India, namely, Sonia Sebastian @ Ayisha, Nimisha @ Fatima Isa, Rafaella and Mehin Jacob Pallath @ Mariam were interviewed by StatNewsGlobal, and the interview was published in the form of a documentary titled '*Khorasan Files: The Journey of Indian 'Islamic State' Widows*' on YouTube on 15/03/2020. Since the release of the documentary, there has been no known contact with the women and children, who have all continued to languish in Pul-e-Charkhi Prison, a maximum security detention facility in Afghanistan.
- 27 On 02/03/2021, the Petitioner learnt that the Government of India had allegedly not been able to locate Nimisha and had closed the file pertaining to Grievance bearing ID AF6WHU103181818. It is pertinent to note that the Petitioner only came to know about the Grievance File being closed by the Respondents upon checking the Madad



Portal Till date, the Respondent Nos 1 to 4 have not provided any information regarding Nimisha to the Petitioner, or to any other Indian citizen's next of kin that are detained alongwith Nimisha at Pul-e-Charkhi Prison. A Screenshot of the Madad Portal detailing the inquiry into Grievance bearing ID AF6WHU103181818 has been annexed herewith and marked as Ext. P-11

- 28 Since their surrender in late 2019, the only available record of any interaction, interview or communication with the surrendering women and children, including Nimisha and her minor daughter, is the aforesaid documentary released on 15/03/2020. Since then, there has been no contact of the detained women and children with the outside world or their respective next of kin.
- 29 It is evident that the Indian authorities have forsaken several Indian citizens which include women and minor children under the age of five. The Respondents cannot waive off their obligations under domestic and International Law with respect to the citizens of India. While the mother of Nimisha has come forth and taken the necessary legal steps to seek the return of Nimisha and her minor daughter, the parents and next of kin of the remaining women and children are not forthcoming out of fear and due to inadequate resources. The Petitioner herein is prevented from seeking relief in respect of the other Indian women and children that have been detained by the Afghanistan authorities because of the procedural rules governing Public Interest Litigations. However, it is hoped that this Hon'ble Court may take suo moto notice in respect of other similarly placed women and children, like Nimisha and her minor daughter, to ensure the safe return of such hapless Indian citizens who are all domiciles of the Respondent No. 3 State and are presently allegedly languishing in Pul-e-Charkhi Prison, Afghanistan.
- 30 Attention must also be drawn to the Passport issued by the Respondent No. 2 to the citizens of the Republic of India. It is stated as follows

*'THESE ARE TO REQUEST AND REQUIRE IN THE NAME OF THE PRESIDENT OF THE REPUBLIC OF INDIA ALL THOSE WHOM IT MAY CONCERN TO ALLOW THE BEARER TO PASS FREELY WITHOUT LET OR HINDERANCE AND*

*TO AFFORD HIM OR HER, EVERY ASSISTANCE AND PROTECTION OF WHICH HE OR SHE MAY STAND IN NEED*

*BY ORDER OF THE PRESIDENT OF THE REPUBLIC OF INDIA"*

It is evident that the Republic of India by virtue of the passport seeks assistance, protection and security of its citizens when they are outside the territorial jurisdiction of the Respondent No. 1. It is, then, peculiar and uncharacteristic for the Respondent No. 1 and 2 to not afford the requisite protection and assistance to its own citizens, especially women and children. A True Copy of the Relevant Portion of the Indian Passport has been annexed herewith and marked as Ext P-12.

- 31 Furthermore, it would be grossly incorrect to state that the Respondent No. 1 and 2 cannot take the appropriate measures to ensure the safe return of Nimisha and her minor daughter. In this regard, it is essential to draw attention to the case of Nishadul Hamzafai. It would not be out of place to state that the Respondent No. 1 and 2 have taken a much harsher approach with women and innocent children that had surrendered in comparison to that of an arrested terrorist. Moreover, the geopolitical situation in Afghanistan is also deteriorating, and is much worse at present in comparison to 2018.
- 32 It is pertinent to note that the Republic of India is bound by International Covenants that have been signed and ratified by it, as well as the domestic law, including the Fundamental Rights guaranteed under Part III of the Constitution of India. In the present case, the rights, and interests of two Indian citizens are concerned, one of whom is an innocent minor girl child under the age of five. It is the responsibility of the Respondents to ensure the wellbeing and welfare of the child, and no such action can be taken that defeats the best interest of the child. True Copies of the Universal Declaration of Human Rights, International Convention on Civil and Political Rights, and International Convention on the Rights of Child are annexed herewith and marked as Ext P-13.
- 33 It is pertinent to note that the United States of America has scheduled the complete withdrawal of its Armed Forces deployed in Afghanistan by 11/09/2021. A brief glimpse at the recent history of Afghanistan would show that there is a grave threat to

the sovereignty of Afghanistan at the hands of local militia, radical groups, and terrorist organisations. After the Soviet-Afghan War, the territory of Afghanistan was captured by the Islamic Emirates of Afghanistan, and a totalitarian regime was established. The Islamic Republic of Afghanistan in its current form, was established only after the 'War on Terror' launched by the United States of America in 2001. Hence, it would not be out of place to suggest that there is a high probability of a similar situation arising after the United States' withdrawal from Afghanistan. In view of the high probability of political overthrow, it is essential for the Respondents to take the necessary steps to safeguard the life and wellbeing of the Indian citizens currently detained in Afghanistan awaiting deportation, extradition, or return. True Copies of news reports regarding USA withdrawal from Afghanistan have been annexed herewith and marked as Ext P-14 (a), to Ext P14 (c)

- 34 It is submitted that the Respondent No. 1 and 2 have already taken measures with respect to the Consular Mission of India at Kandahar and are in the process of evacuating the Indian citizens presently in Afghanistan. All Indian citizens are eligible for the same treatments and protection from their Country of Origin and the Indian Government. Hence, the Respondent No. 1 and 2, being aware of the rising threat of Taliban in Afghanistan cannot take contradictory stance viz a viz detained women and children, and diplomats, especially when the diplomatic mission is also responsible for the care and safety of all Indian citizens in the designated country. In this regard, it is submitted that the Vienna Convention on Consular Relations, 1963 which has been ratified by India, provides under Article 5 that

*'(a) Protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law*

*(e) Helping and assisting nationals, both individuals and bodies corporate, of the sending State,*

*(h) Safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons,"*



A True Copy of The Hindu Article regarding consular evacuation dated 11/07/2021 has been annexed herewith and marked as Ext P-15 A True Copy of the Vienna Convention on Consular Relations 1963 has been annexed herewith and marked as Ext P-16

- 35 In any case, the responsibility of the State towards its citizens cannot be waived off or ignored, much less in a case involving the welfare of minor children and women. The present case is not one for setting the daughter of the Petitioner at liberty upon repatriation, rather a case for seeking the return of Indian citizens to their country of origin where the process of law can take its due course. It is pertinent to rehabilitate the child and integrate her into the society by reuniting her with next of kin, under the watchful eyes of the relevant human rights organizations, namely Respondent Nos. 4 and 5, by the State, namely Respondent Nos. 1 to 3.
- 36 There are several media reports from various national newspapers of repute suggesting that the Government of Afghanistan wishes to deport Nimisha, her minor daughter, as well as the other Indian women and children currently detained in Pul-e-Charkhi Prison, Afghanistan. According to the media reports, the Government of India has refused to accept its citizens and has left the minor children and women at the mercy of Afghan authorities. While the media reports require confirmation from the Respondents, the publication of such reports begs the question as to why such an important issue would suddenly arise in media without any veracity, especially since the life and wellbeing of innocent minor children is involved. True Copies of various media reports regarding the detention of Indian women and children have been annexed herewith and marked as Ext P-17(a) to p17(d)
- 37 It is deeply concerning that the Respondents have failed to even contact the next of kin of the Indian women and children presently languishing in an Afghan prison. It is pertinent to note that the multiple media reports pertain to the same subject matter, have been published in the same time period, and contain similar information. Therefore, it can be reasonably inferred that the information was based on a briefing from an official source. Therefore, the Respondent No. 2, which has absorbed the erstwhile Ministry of Overseas Indian Affairs, ought to have contacted and briefed all



the concerned families prior to the publication of the media reports, and in any case, after such media reports surfaced. A failure to inform the next of kin shows the apathy and lack of concern of the Respondents in dealing with a sensitive matter involving minor children and young women.

- 38 It is pertinent to note that none of the Media Reports have been denounced, dismissed, or countered by the Indian Authorities. The disinterest of the Respondents in denouncing the media reports published by the leading national news media grants credibility to the reports. Therefore, there seems to be some substance of truth in these reports regarding the conduct of the Respondents, particularly the Respondent Nos. 1 and 2, in failing to uphold the Fundamental Rights of its citizens.
- 39 The Petitioner had filed Writ Petition bearing W.P. (Cil) 178/2021 seeking *inter alia*, the relief in the nature of Habeas Corpus, that was heard by the Hon'ble Division Bench of this Hon'ble Court. The Petitioner withdrew the Writ Petition which was in the nature of Habeas Corpus with liberty to approach the Hon'ble Court again by way of a more appropriate Writ Petition. Such liberty was granted by this Hon'ble High Court and the said petition was dismissed as withdrawn. A True Copy of the Order dated 13/07/2021 has been annexed herewith and marked as Ext P-18.

Having no other alternate efficacious remedy to seek the safe return of Nimisha and her minor daughter, the Petitioner submits this writ petition on the following among other

#### GROUND

- A It is humbly submitted that the Respondents have not taken all the necessary measures to uphold the Fundamental Rights of Nimisha and her minor daughter, particularly Right to Life under Article 21.
- B It is submitted that the Right to Education has been recognized as a Fundamental Right and guaranteed under Article 21A. The Respondents are bound to ensure that Nimisha's daughter is not deprived of her basic right to education. In the absence of structured education, it is apprehended that Nimisha's daughter is

vulnerable for exposure to indoctrination and radicalization at a very nascent stage of her life

- C It is submitted that Section 2 (b) of the Commission for Protection of Child Rights Act 2005 defines that 'Child Rights include all those rights that have been enshrined in the CRC. This essentially means that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child must be a primary consideration. This has further been embodied in the National Policy for Children, 2013 of the Government of India. The Respondents ought to have taken all the necessary steps to ensure that the daughter of Nimisha receives the necessary care and protection for her well-being, taking into account the rights of Nimisha herself while deciding appropriate legislative and administrative measures.
- D It is submitted that the minor daughter of Nimisha is entitled to every such protection and it is the responsibility of the Respondents to ensure the same. In the present case, a prison, let alone a maximum-security prison in a foreign country, is not a conducive environment for the proper development and growth of a child and is also extremely dangerous especially as the minor child is a detained alien in a war-torn country.
- E It is submitted that the Respondents cannot approbate and reprobate as per their convenience to overshadow the failure of State Machinery in ensuring the Fundamental Rights of Indian Citizens. It is particularly evident that the Respondents have taken contradictory approaches regarding the whereabouts of Nimisha, by first lodging an FIR and NIA case against her for travelling to Afghanistan in August 2016, confirming the same in the UAPT Report in May 2017, and thereafter, without due diligence stating that the Respondents have no information of Nimisha travelling to Afghanistan in July 2017.

- F It is submitted that the INTERPOL has issued a Red Corner Notice in the name of Nimisha and she is wanted by the National Investigating Agency in respect to her travel to Afghanistan. A Red Corner Notice signifies that the Requesting Country seeks provisional arrest or detention with the view of extradition for trial and prosecution. India and Afghanistan have signed an Extradition Treaty which has been in force since 24/11/2019.
- G It is submitted that in a catena of judgements, the Hon'ble Supreme Court of India has upheld that the Right to Life under Article 21 of the Indian Constitution includes the Right to Fair Trial. In the present case, the Respondents ought to ensure that Nimisha, who has been accused under a myriad of serious charges, is afforded a free and fair trial, which can only be afforded upon her repatriation to India.
- H It is submitted that Section 3, Indian Penal Code, 1860 and Section 188, Code of Criminal Procedure, 1973 make it abundantly clear that Indian Law permits the trial and prosecution of Indian citizens for crimes committed outside the territory of India.
- I It is submitted that the general location of Nimisha, her minor daughter and the various other Indian citizens is known to the public at large, with various media reports on the issue as well as an interview conducted by *StarNewsGlobal* being in Public Domain. It would not be out of place to state that the machinery of the State is competent to track, locate and extradite persons wanted by the National Investigating Agency, especially in such a well-publicized case.
- J It is submitted that the return of Nimisha and her minor daughter shall not pose a threat to the security or sovereignty of India since after the repatriation of Nimisha and her minor daughter, the minor daughter can be rehabilitated and reintegrated into society, under the watchful eyes of the human rights organizations. On the other hand, the due process of law can be followed in respect to Nimisha by the security agencies and courts of law, subject to conformity with the universal



human rights, under the watchful eyes of the human rights organizations, particularly Respondent Nos 4 and 5

- K It is submitted that in abandoning Indian citizens, the Respondents inadvertently bolster the falsehoods being propagated by such radical outfits vis-à-vis the state of disconnect and dissociation between the citizens and the country. Further, the abandoning of Indian citizens can further create an environment of no fear as similar radicalized elements may be encouraged to leave the country with little to no fear of repercussions. Any such action of the Respondents, therefore, shall be detrimental to the integrity and national security of India.
- L Under customary international law, the host country has the right to deport to the country of origin, the holders of the passport of the country of origin, who might have entered the host country illegally or are otherwise no longer welcome in the host country. The refusal of the Respondent No 1 and 2 to accept Indian citizens sought to be deported by the Islamic Republic of Afghanistan, according to media reports, is therefore, in the teeth of customary international law.

For these and other grounds to be submitted at the time of hearing it is most humbly prayed that this Hon'ble Court may be pleased to grant the following

Reliefs

- i) Issue a Writ of Mandamus, specifically directing the Respondent No 1 and 2 to take necessary actions in conjunction with the Government of the Islamic Republic of Afghanistan to facilitate the repatriation of Nimisha and her minor daughter and ensure the safe return of the said persons to the Respondent No 3 State,
- ii) Issue a Writ of Mandamus directing the Respondent No 3 to 5, to ensure, upon repatriation of the minor child, the rehabilitation of the minor child with the Petitioner, being the grandmother and next of kin of the child for effective rehabilitation and reintegration into society,



- iii) Issue a Writ of Mandamus directing the Respondents, particularly Respondent Nos 4 and 5, to supervise the actions of the investigating authorities in respect of Nimisha,
- iv) Such other reliefs which is deemed to be fit and proper to this Hon'ble Court in the facts and circumstance of the case

**INTERIM RELIEF**

For the reasons stated in the Writ Petition (C) - , and the affidavit accompanying thereto it is most humbly prayed that this Hon'ble Court may be pleased to direct the Respondent No 2 to initiate the necessary engagements with the Government of the Islamic Republic of Afghanistan to ascertain the whereabouts of Nimisha and her minor daughter and their wellbeing and report back to this Hon'ble Court

Dated this the 16<sup>th</sup> day of July 2021

Petitioner

Sunil J Mathew/ Col Amit Kumar (Retd )  
Counsel for the Petitioner