IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.05.2025

C O R A M

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

H.C.P.No.990 of 2025

M.A ... Petitioner

-vs-

1. Superintendent of Police,
   Vellore.

2. Deputy Superintendent of Police,
   Gudiyattham Police,
   Gudiyatham.

3. Inspector of Police,
   Gudiyatham Town Police Station,
   Gudiyatham Taluk,
   Vellore District – 632 602.

4. B.. ... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India, directing the 1st Respondent to produce the body of the petitioner's friend D.... daughter of B..... aged about 25 years from the illegal custody of the 4th respondent before this Court and set her at liberty.

For Petitioner : M/s.M.A.Mumtaj Surya

For R1 to R3 : Mr.E.Raj Thilak
Addl. Public Prosecutor

*****

O R D E R

(*By G.R.SWAMINATHAN,J.*)

The writ petitioner has filed this petition to cause production of Ms.D, the daughter of the fourth respondent herein. According to her, the fourth respondent, who is the father of the detenue, is detaining her against her will. The petitioner wants this Court to set the detenue at liberty.

2.The detenue was produced before us by the third respondent. The detenue was accompanied by her mother. We had a detailed interaction with both of them. The detenue's mother broke down and requested us to allow her to take her daughter back home. According to her, the writ petitioner had led her daughter astray. She even alleged that her daughter is drug-addicted and she squarely blamed the petitioner for her condition. The stand of the mother is that her daughter requires counselling and rehabilitation.

3.Before interacting with the detenue, we were conscious that the Hon'ble Supreme Court in ***Devu G Nair versus The State of Kerala (2024 LiveLaw (SC) 249)*** had issued a set of guidelines for the courts in dealing with habeas corpus petitions or petitions for police protection. They read as follows:

> *"a. Habeas corpus petitions and petitions for protection filed by a partner, friend or a natal family member must be given a priority in listing and hearing before the court. A court must avoid adjourning the matter, or delays in the disposal of the case;*
>
> *b. In evaluating the locus standi of a partner or friend, the court must not make a roving enquiry into the precise nature of the relationship between the appellant and the person;*
>
> *c. The effort must be to create an environment conducive for a free and uncoerced dialogue to ascertain the wishes of the corpus; d. The court must ensure that the corpus is produced before the court and given the opportunity to interact with the judges in-person in chambers to ensure the privacy and safety of the detained or missing person. The court must conduct in-camera proceedings. The recording of the statement must be transcribed and the recording must be secured to ensure that it is not accessible to any other party;*
>
> *e. The court must ensure that the wishes of the detained person is not unduly influenced by the Court, or the police, or*

the natal family during the course of the proceedings. In particular, the court must ensure that the individuals(s) alleged to be detaining the individual against their volition are not present in the same environment as the detained or missing person. Similarly, in petitions seeking police protection from the natal family of the parties, the family must not be placed in the same environment as the petitioners; f. Upon securing the environment and inviting the detained or missing person in chambers, the court must make active efforts to put the detained or missing person at ease. The preferred name and pronouns of the detained or missing person may be asked. The person must be given a comfortable seating, access to drinking water and washroom. They must be allowed to take periodic breaks to collect themselves. The judge must adopt a friendly and compassionate demeanor and make all efforts to defuse any tension or discomfort. Courts must ensure that the detained or missing person faces no obstacles in being able to express their wishes to the court;

g. A court while dealing with the detained or missing person may ascertain the age of the detained or missing person. However, the minority of the detained or missing person must not be used, at the threshold, to dismiss a habeas corpus petition against illegal detention by a natal family; h. The judges must showcase sincere empathy and compassion for the case of the detained or missing person. Social morality laden with homophobic or transphobic views or any personal predilection of the judge or sympathy for the natal family

must be eschewed. The court must ensure that the law is followed in ascertaining the free will of the detained or missing person; i. If a detained or missing person expresses their wish to not go back to the alleged detainer or the natal family, then the person must be released immediately without any further delay;

j. The court must acknowledge that some intimate partners may face social stigma and a neutral stand of the law would be detrimental to the fundamental freedoms of the appellant. Therefore, a court while dealing with a petition for police protection by intimate partners on the grounds that they are a same sex, transgender, inter-faith or inter-caste couple must grant an ad-interim measure, such as immediately granting police protection to the petitioners, before establishing the threshold requirement of being at grave risk of violence and abuse. The protection granted to intimate partners must be with a view to maintain their privacy and dignity;

k. The Court shall not pass any directions for counselling or parental care when the corpus is produced before the Court. The role of the Court is limited to ascertaining the will of the person. The Court must not adopt counselling as a means of changing the mind of the appellant, or the detained/missing person;

l. The Judge during the interaction with the corpus to ascertain their views must not attempt to change or influence the admission of the sexual orientation or gender identity of the appellant or the corpus. The court must act swiftly against

any queerphobic, transphobic, or otherwise derogatory conduct or remark by the alleged detainers, court staff, or lawyers; and

m. Sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are a matter of self-identification and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community. Courts must exercise caution in passing any direction or making any comment which may be perceived as pejorative."

4.We interacted with the detenue bearing the above principles in mind. Our sole endeavour was to ascertain her actual wishes and the choice she had made. The detenue is aged about 25 years. She is well qualified. She appeared to be a perfectly normal looking young woman. It would be unfair to accuse her of any kind of addiction. To a specific question from us, the detenue replied that she is a lesbian and in relationship with the writ petitioner. She made it clear that she wants to go with the petitioner. She confirmed the allegation that she is being detained against her will by her natal family. It appeared that she was forcibly taken to her home and beaten. She told us that her natal family members forced her to undergo

certain rituals so that she will become "normal". She even apprehended danger to her life.

5.It is significant to note that in the affidavit filed in support of the writ petition, the petitioner has nowhere described the true nature of her relationship with the detenue. Even in her complaint to the Police, the petitioner called herself as the detenue's close friend. We can understand the hesitation on her part. Our Society is still conservative, notwithstanding ***NALSA and Navtej Singh Johar.*** Not every parent is like Justice Leila Seth. She could acknowledge and accept her son's sexual orientation. When the progressive Delhi High Court decision in ***Naz Foundation*** was originally reversed by the Supreme Court, Leila Seth J penned down a heart-felt note. The opening paragraphs read thus:

> "*My name is Leila Seth. I am eighty-three years old. I have been in a long and happy marriage of more than sixty years with my husband Premo, and am the mother of three children. The eldest, Vikram, is a writer. The second, Shantum, is a Buddhist teacher. The third, Aradhana, is an artist and filmmaker. I love them all. My husband and I have brought them up with the values we were brought up with—honesty, courage, and sympathy for*

others. We know that they are hardworking and affectionate people who are trying to do some good in the world.

But our eldest, Vikram, is now a criminal, an unapprehended felon. This is because, like many millions of other Indians, he is gay; and last month, two judges of the Supreme Court overturned the judgment of two judges of the Delhi High Court that, four years ago, decriminalized homosexuality. Now, once again, if Vikram falls in love with another man, he will be committing a crime punishable by imprisonment for life if he expresses his love physically. The Supreme Court judgment means that he would have to be celibate for the rest of his life or else leave the country where he was born, to which he belongs, and which he loves more than any other.

...

What makes life meaningful is love. The right that makes us human is the right to love. To criminalize the expression of that right is profoundly cruel and inhumane. To acquiesce in such criminalization or, worse, to recriminalize it is to display the very opposite of compassion. To show exaggerated deference to a majoritarian Parliament when the matter is one of fundamental rights is to display judicial pusillanimity, for there is no doubt that in the constitutional scheme it is the judiciary that is the ultimate interpreter."

Unfortunately, Leila Seth J did not live to see the decriminalisation of homosexuality through the historic judgment in ***Navtej Singh Johar v. Union of India ((2018) 1 SCC 791).***

6.The mother of the detenue is no Leila Seth. We could understand her feelings and temperament. She wants her daughter to be like any other normal, heterosexual woman, get married and settle down in life. We endeavoured in vain to impress upon her that her daughter, being an adult, is entitled to choose a life of her own.

7. The law is clear. The precedents are clearer. We will start with the ***Yogyakarta principles*** on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, drafted and adopted in the year 2006. All individuals, regardless of their sexual orientation and gender identity, possess the right to universal enjoyment of human rights (Principle 1). Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or

correspondence as well as to protection from unlawful attacks on their honour and reputation (Principle 6). Everyone, regardless of sexual orientation or gender identity, has a right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by Government officials or by any individual or group (Principle 5). Everyone has a right to found a family and no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members (Principle 24).

8. The Hon'ble Supreme Court in the decision reported in ***(2014) 5 SCC 438 NALSA vs Union of India*** held that the ***Yogyakarta Principles*** must be recognised and followed as they have sufficient legal and historical justification in our country. The expression "family" has to be understood in an expanded sense. In ***Deepika Singh Vs Central Administrative Tribunal (2022 INSC 834),*** it was held that familial relationships may take the form of domestic, unmarried partnerships or queer relationships and that families which are different from traditional ones cannot be put in a disadvantageous position. While ***Supriyo @ Supriya Chakraborty Vs***

Union of India (2023 INSC 920) may not have legalised marriage between same sex couples, they can very well form a family. Marriage is not the sole mode to found a family. The concept of "chosen family" is now well settled and acknowledged in LGBTQIA+ jurisprudence. The petitioner and the detenue can very well constitute a family. A learned Judge of this Court (Mr.Justice Anandvenkatesh) in ***Prasanna J. Vs S. Sushma*** reported in ***MANU/TN/7445/2023*** approved a "Deed of familial Association" that purported to recognise the civil union entered into between LGBTQAI+ partners.

9. ***NALSA*** and ***Navtej Johar*** have declared that sexual orientation is a matter of individual choice and that it is one of the most basic aspects of self-determination, dignity and freedom. It is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India. A three judges Bench of the Hon'ble Supreme Court in ***Shakti Vahini v. Union of India, (2018) 7 SCC 192*** held that assertion of choice is an insegregable facet of liberty and dignity. The relevant paragraphs are as follows:

"*37. In* ***Asha Ranjan v. State of Bihar (2017) 4 SCC 397,*** *the Court, in a different context, noted : (SCC p. 434, para 61)*

> *"61. ... choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded on individual choice that is recognised in the Constitution under Article 19, and such a right is not expected to succumb to the concept of "class honour" or "group thinking". It is because the sense of class honour has no legitimacy even if it is practised by the collective under some kind of a notion."*

43... It has to be sublimely borne in mind that when two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognised under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitutional law and once that is recognised, the said right needs to be protected

45. .. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness..."

In ***Shafin Jahan Vs Asokan KM (2018) 16 SCC 368***, it was held that the choice of a partner, whether within or outside marriage, lies within the

exclusive domain of each individual.

10.Though ***Shakti Vahini, Asha Ranjan and Shafin Jahan*** were rendered in the context of inter-caste and inter-religious marriages, the ratio laid down therein would apply with equal force to same sex relationships also. We feel a certain discomfort in employing the expression "queer". Any standard dictionary defines this word as meaning "strange or odd". Queering one's pitch means spoiling the show. To a homosexual individual, his/her/their sexual orientation must be perfectly natural and normal. There is nothing strange or odd about such inclinations. Why then should they be called as queer?.

11.We have come to the conclusion that the detenue is entitled to go with the petitioner and that she cannot be detained against her will by her family members. But before we formally allow this Habeas Corpus Petition, we have to place on record the fact that the jurisdictional Police did not respond to the SOS messages sent by the petitioner. A reading of the

affidavit filed in support of the writ petition shows the personnel attached to Reddiyarpalayam Police Station, Pondichery, Gudiyatham Police Station and Jeevan Beema Nagar Police Station in poor light. They appear to have behaved in an insensitive manner. They had forced the detenue to go with her parents. The petitioner had sent a written complaint on 05.05.2025 to the Inspector of Police, Gudiyatham Police Station complaining about the illegal detention of the detenue. Copies were marked to the DSP, Gudiyatham and SP, Vellore. Unfortunately, no action was taken by the Police. Only after this HCP was filed, the Police woke up and produced the detenue before us. We censure the rank inaction on the part of the Police and the insensitivity shown by them. The ***Yogyakarta Principles*** affirm the right to security of the person concerned. When there is a right, there has to be a correlative duty. We hold that the Government officials, in particular the jurisdictional Police, have a duty to expeditiously and appropriately respond whenever complaints of this nature are received from the members of the LGBTQIA+ community.

12.Since we have satisfied ourselves that the detenue wants to join the

petitioner and that she is being detained against her will, we allow this Habeas Corpus Petition and set her at liberty. We also restrain the detenue's natal family members from interfering with her personal liberty. We issue a writ of continuing mandamus to the jurisdictional Police to afford adequate protection to the detenue as well as the petitioner as and when required. No costs.

(G.R.S.J.,) (V.L.N,J.,)
22.05.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
MGA

Note: Registry to conceal the names of the Petitioner, the 4th respondent as well as the detenue while uploading the web copy.

G.R.SWAMINATHAN,J.,
AND
V.LAKSHMINARAYANAN,J.,

MGA

To:

1. The Superintendent of Police,
   Vellore.

2. The Deputy Superintendent of Police,
   Gudiyattham Police,
   Gudiyatham.

3. The Inspector of Police,
   Gudiyatham Town Police Station,
   Gudiyatham Taluk,
   Vellore District – 632 602.

H.C.P.No.990 of 2025

22.05.2025