

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
&
THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

Monday, the 29th day of September 2025 / 7th Aswina, 1947
WP(CRL.) NO. 1035 OF 2025(S)

PETITIONER:

ART BANK, REP. BY ITS MANAGING DIRECTOR, ABDUL MUTHALIF M.A.,
AGED 55 YEARS, S/O.ABOOBACKER, 128, FLANNIGO SFS GREENS,
CHENGAMANAD P.O., CHENGAMANAD VILLAGE, ERNAKULAM DISTRICT,
PIN - 683102.

RESPONDENTS:

1. STATE POLICE CHIEF OF KERALA, POLICE HEAD QUARTERS, VELLAYAMBALAM, THIRUVANANTHAPURAM, PIN - 695010
 2. STATION HOUSE OFFICER, KALAMASSERY POLICE STATION, ERNAKULAM, PIN - 682033
 3. THE DISTRICT MEDICAL OFFICER, DISTRICT HOSPITAL, ERNAKULAM DISTRICT, PIN - 682031
 4. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
 5. JOINT SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT AND APPROPRIATE AUTHORITY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- ADDITIONAL R6 IMPLEADED**
6. SHANTHI BHAVAN, KAMMATTI PADAM, ERNAKULAM SOUTH, PIN - 682 011.
*ADDL.R6 IS SUO MOTU IMPLEADED AS PER ORDER DATED 07/08/2025 IN WP(CRL.) 1035/2025

Writ petition (criminal) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(Crl.) the High Court be pleased to direct the respondents 1 to 3 to produce the detainees before this Hon'ble Court and this Hon'ble Court may kindly be please to set them free as an interim measure pending disposal of this Writ Petition (Crl.).

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(Crl.), this Court's order dated 19/09/2025 and upon hearing the arguments of SRI. GIKKU JACOB, Advocate for the petitioner, SRI.SUNIL NATH, PUBLIC PROSECUTOR for R1 to R5 and of M/S. FERHA AZEEZ, SREERAG SHYLAN, DEVANANDA S. & SANDHYA RAJU, Advocates for Addl.R6, the court passed the following:

DEVAN RAMACHANDRAN & M.B.SNEHALATHA, JJ.

W.P.(Crl) No.1035/2025

Dated this the 29th day of September, 2025

O R D E R

Devan Ramachandran, J.

For want of better words, *prima facie*, we can only say that we are shocked by what we have seen within the factual matrix of this case.

2. Being fully aware that it may be too early for us to speak affirmatively, we choose to be circumspect.

3. Innovation is always a key in medicine; and Assisted Reproductive Technology (ART) has been a global game changer. Unfortunately, ART has brought into its fold, because of its huge demand, various deleterious tendencies, particularly in the growing markets in low and middle income countries. We fear if this has percolated into our small State of Kerala also.

4. This case involves the alleged detention of several women by Police/Health Department, who the petitioner claims to be ‘egg donors’ who came to their institution voluntarily

WP(Crl)1035/25

2

seeking screening and medical assistance. However, the Authorities impute that the petitioner is acting contrary to law and illegally; and apart from such allegations, they seem to suspect exploitation and even human trafficking.

5. All the ladies are stated to be from places far away from Kerala; and that, after they were taken into custody from the petitioner's premises, were housed in the 'Santhi Bhavan' – which is a shelter home run by the Government of Kerala.

6. Smt.Ferha Azeez and Smt.Sandhya Raju, appearing for the shelter home, had brought to our notice earlier, that there were various attempts by vested interests to influence the ladies ('alleged detenues') and even to threaten them. We have, therefore, issued orders giving them protection.

7. Today, Smt.Ferha Azeez made affirmative submissions that the ladies in question appear to have been brought to Kerala, persuaded to be either surrogant mothers in future, or egg donors, purely by the lure of the lucre. She pointed out to the advertisements produced both by the respondents and by

WP(Crl)1035/25

3

the petitioner, to assert that there is a wide spread attempt, to mislead couples to take treatment and finally get entangled into the web being run by several interests, including entities like the petitioner, clinics and such other. She, however, hastened to add that this is not a general statement and that there may be institutions and systems which are operating as per law; but that, since the amount involved is very high and substantial, several questionable and confutative tendencies are now arising.

8. Though it is too early for us to speak finally now – we being told that investigation is being carried on by the Health Department and the Police – a prefatory word of agony needs to be placed, that if the ladies in question, and several others, are being subjected to exploitation or financial abuse.

9. ‘ART’ is a very complex procedure, often involving emotional journeys. Many of the couple are seen to be drawn in by advertisements and such methods, particularly through the social media and other avenues; and it is their vulnerability which is always taken advantage of.

WP(Crl)1035/25

4

10. It is well documented internationally, that there is also an exploitation of hope of the intending parents, which makes them even more vulnerable and ready to accept risks. On the other side of the spectrum are unsuspecting women – who are generally new mothers – lured in by the amounts offered; and this creates a complex web of deceit, with unscrupulous elements becoming middlemen, controlling the whole scenario.

11. It is not merely the angle of money/finances that presently bothers us, but it is the *prima facie* impression of exploitation of uneducated and naive women from other parts of the State, who are attracted into this purely by promises of money. There is a lot of power imbalance in the situation, with such ladies having absolutely nothing, or very less command, over the situation, into which they are being pushed into; and what is more dangerous is the lack of transparency, with unscrupulous elements being able to act under the radar of law, perhaps because the Statue itself is in its nascent stage.

WP(Crl)1035/25

5

12. The human exploitation becomes exacerbated since there is always an emotional toll involved, extracting life resources from a human body; and what shows out is an abject breach of ethical standards and principles, shocking any human mind guided by even the faintest of humanism.

13. Since the learned Government Pleader – Sri.Sunil Nath, informs us that investigation is going on and that there have been subsequent raids also – not only in the petitioner-institution, but around the State – we choose to wait a little, to find out what the Authorities are doing.

14. Suffice to say, we are aghast and shocked – assuming the facts stated before us to be true – that such tendencies are allowed in a State like ours, where literacy is highest. Exploitation cuts at the root of everything constitutionally guaranteed; and therefore, it becomes enjoined on us to intervene, when even a whispering semblance of the same is presented before us. Of course, what we now see is more than that, with substantial information available of the

WP(Crl)1035/25

6

manner in which such tendencies appear to have nourished and flourished in our State.

We, consequently, adjourn this matter to be called on 10.10.2025; within which time, the respondents are directed to place on record comprehensive reports on all the action taken, proposed to be taken, as also the steps which are necessary to ensure that such tendencies are culled at its roots.

The Authorities concerned under the Health Department and the Police have their duty cut out, to ensure that such exploitations are effaced and not allowed to happen in future, guided by the acme constitutional imperatives and principles, which guide us on a constant basis.

Post on 10.10.2025.

Sd/-

DEVAN RAMACHANDRAN, JUDGE

Sd/-

M.B.SNEHALATHA, JUDGE

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