

K. SURENDRA MOHAN & K. ABRAHAM MATHEW, JJ.

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W.P. (Crl.) No. 297 of 2016  
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Dated this the 24<sup>th</sup> day of May, 2017

JUDGMENT

Surendra Mohan, J.

This writ petition for the issue of a writ of habeas corpus is filed by the father of a girl by name, Ms.Akhila. This is the second time that the petitioner is approaching this Court. The earlier writ petition, W.P.(Crl.) 25 of 2016 was disposed of by another Division Bench of this Court on 25.1.2016 permitting Ms.Akhila, the alleged detainee, to continue her residence with the 7<sup>th</sup> respondent herein. This writ petition was filed apprehending that the alleged detainee was likely to be transported out of the country. This writ petition was admitted on 17.8.2016 and an interim order directing respondents 1 to 4 to keep her under surveillance and to ensure that she was not taken out of the country without further orders from this Court was issued. The said order is still in force.

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2. Ms. Akhila is the only child of Sri.Ashokan, the petitioner, and Smt. Ponnamma. They both belong to the Hindu (Ezhava) community and hail from Vaikom in Kottayam District. Ms.Akhila was therefore brought up in accordance with the beliefs and rituals of Hindu religion. At present, she is aged 24 years and has completed her degree course in Homeopathic Medicine, BHMS (Bachelor of Homeopathic Medicine and Surgery). She had joined the Shivaraj Homeopathy Medical College, Salem for her BHMS course. It is not in dispute that, though she had initially resided in the College Hostel, she later on took a house on rent outside the College and started residing there with four other friends. Two of her friends were Hindus, while the other two were Muslims. Among them, she became very close with Ms.Jaseena. She had accompanied Ms.Jaseena to her house and stayed with her a number of times. Her acquaintance with Ms.Jaseena attracted her to the tenets and beliefs of Islamic religion. The petitioner alleges that, she was influenced and persuaded to embrace Islam forcibly

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by Sri. Aboobacker, father of Ms.Jaseena. It is further alleged that, the 6<sup>th</sup> respondent is an unauthorised Islamic conversion centre conducted by the Socialist Democratic Party of India (SDPI for short) or the Popular Front of India (PFI for short) formed by the leaders of SIMI, which is a radical organization that has been banned. According to the petitioner, Ms.Jaseena and Ms.Faseena are sisters and daughters of Sri.Aboobacker. The three of them had misguided, misled and forced the detainee to accept Islam.

3. According to him, on 6.1.2016 Ms. Akhila was taken away from Salem by Ms.Jaseena, Ms.Faseena and their father, without informing the petitioner. Therefore, he complained to the Police since she was missing, with no information about her whereabouts. The Perinthalmanna Police registered Crime No. 21 of 2016 initially under Section 57 of the Kerala Police Act. Later on, Sections 153A, 295A and 107 of Indian Penal Code were added and Sri.Aboobacker was arrested. However, the detainee could not be traced out. In view of the above, the writ petitioner

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approached this Court by filing W.P.(Crl.) No. 25 of 2016 seeking a writ of habeas corpus for her production.

4. On 14.1.2016, this Court directed the Government Pleader to get instructions regarding the action taken on the complaint of the writ petitioner and the investigation made for tracing out the missing girl. The case was thereafter posted to 19.1.2016. On 19.1.2016 the alleged detainee, Ms.Akhila, appeared in person. She also filed I.A. No. 792 of 2016 through her lawyer Adv.P.K.Ibrahim seeking to get herself impleaded as an additional respondent in the writ petition. Accordingly, she was so impleaded. In her affidavit filed in support of her impleading petition, she narrated the circumstances under which she had left her home. According to her, she was aged 24 years and was doing her House Surgeoncy in BHMS Course at Shivaraj Homeopathy Medical College at Salem after completing the course. (The above assertion that she was doing House Surgeoncy Course is a false statement and she has not joined for her House Surgeoncy Course, till

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date). She has stated in her affidavit that while she was staying in a rented house at Salem along with her friends, two of her friends Ms. Jaseena and Ms.Faseena impressed her with their timely prayers and good character. She started reading Islamic books and also viewing internet videos out of her interest to learn more about Islam. It is stated that, her doubts about the concept of many Gods in the Hindu faith and the confusion as to which God she should pray to, gradually cleared and the concept of one God propounded by Islam started appealing to her mind and logic. Therefore, she started following Islamic faith, without formally announcing any change of faith. She used to pray both in her room as well as at her house. While so, one day her father saw her praying and warned her against Islam, which, according to him, was a religion of terrorism. Her father, according to her, was a non-believer while her mother was a Hindu devotee. Therefore, she kept her faith a secret. While so, her grandfather died in November, 2015. She remained at home to attend his funeral ceremony and

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the rituals that follow, for about 40 days. Her relatives forced her to perform the rituals causing mental anguish to her. She therefore decided to become a Muslim. Accordingly, she left home on 2.1.2016 and directly went to the house of Ms. Jaseena instead of proceeding to Salem. It is stated that Ms.Jaseena then informed her father Sri.Aboobacker, who tried to get her admitted into some institution having special courses for converts to Islam. Though she was taken to an institution by name KIM, they did not admit her. Sri.Aboobacker then took her to Tharbiathul Islam Sabha where they agreed to admit her as an external candidate. For being admitted as an internal candidate, they insisted on the parents of the alleged detainee to be brought. For the purpose of joining as an external candidate, Ms.Akhila executed an affidavit testifying that she was accepting Islam on her own without force or persuasion from any one.

5. The alleged detainee has further stated that, since Sri.Aboobacker did not want to keep her at his house,

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he approached another institution by name Satyasarani. Since it was at 8 p.m. when they reached the institution, they were advised to report after two days with a notarized affidavit. Accordingly, the alleged detainee stayed in the house of Sri.Aboobacker from 2.1.2016 to 4.1.2016. On 5.1.2016, Sri.Aboobacker expressed his unwillingness to help her any more and sent her back to Salem. On 6.1.2016, the alleged detainee had gone to the College wearing a scarf that covered her head making her change of faith, public. Thereupon, one of her friends, Ms. Archana informed Ms.Akhila's parents. On the same day, she received a phone call from her mother informing her that her father had met with an accident fracturing his leg. Therefore, she was asked to return home immediately. However, Ms.Akhila understood that no such accident had occurred. She therefore went to Ms.Jaseena's house at Perinthalmanna, Malappuram. She reached Perinthalmanna at 1 a.m. She had got a call from the petitioner on her way to Perinthalmanna that unless she returned home, he would

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commit suicide.

6. According to her, on her way to Perinthalmanna, she had informed Satyasarani that she wanted to be admitted on 7.1.2016 itself and that she would be available at her friend Ms.Jaseena's house. She wanted them to take her from Ms.Jaseena's house, since Ms.Jaseena's father was not willing to help her. Thereupon, according to her, Satyasarani contacted Smt.Sainaba (the 7<sup>th</sup> respondent herein), a social worker, and sought her help in the matter. She was accordingly asked to meet the alleged detainee. Accordingly, she met the alleged detainee, but left the place noticing the difference of opinion between her and Sri.Aboobacker. Later, after leaving the house of Ms.Jaseena, the alleged detainee sought the help of the 7<sup>th</sup> respondent and she has been staying with her, from 7.1.2016 onwards. She has further gone on to say that, she had issued a registered letter to her father as well as another letter to the Director General of Police informing them of the actual state of affairs. She asserted before this



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Court that, she, being a person who has attained majority, was within her rights to choose a religion of her choice and to follow a faith that was appealing to her. According to her, she was subjected to Police harassment pursuant to the complaint lodged by her father. Therefore, she had accompanied the 7<sup>th</sup> respondent and had together filed W.P. (C) No. 1965 of 2016 complaining against Police harassment. It was when she came to this Court in connection with the said case that she came to know of the pendency of the habeas corpus petition filed by her father. It was in the said circumstances that she filed the impleading petition and appeared in Court.

7. This Court, after considering the matter on 19.1.2016 found that Ms.Akhila was not under any illegal confinement. This Court also interacted with the detenue and permitted her to accompany the 7<sup>th</sup> respondent and to reside with her. However, this Court directed her to produce proof of her admission to a course at Satyasarani institution. Her parents were also permitted to visit her.

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Accordingly, as per judgment dated 25.1.2016 the writ petition was disposed of permitting the alleged detainee to reside at a place of her choice and recording the fact that she was residing at Satyasarani institution, of her own free will. Her parents and family members were permitted to visit her at the institution.

8. The present writ petition was filed on 16.8.2016 alleging that the detainee was likely to be taken out of India. As already noticed above, the case of the petitioner is that, this is an instance of forcible conversion to Islam at the instance of her friends Ms. Jaseena and Ms.Faseena as well as their father Sri.Aboobacker. It is only to save Sri.Aboobacker from the criminal case charged against him that she had made statements in her affidavit regarding his reluctance to admit her to the Satyasarani and to help her in embracing Islam. The real state of affairs is contrary, it is alleged. It was Sri.Aboobacker, who had pressurized and persuaded the detainee to embrace Islam and therefore, this is a case of forcible conversion. The 6<sup>th</sup>

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respondent Satyasarani is an organization engaged in such illegal conversion and the 7<sup>th</sup> respondent is part of the same organization. As already stated above, this writ petition was admitted on 17.8.2016, and an interim order directing respondents 1 to 4 to keep her under surveillance and to ensure that she was not taken out of India was issued. Thereafter the case was posted to 22.8.2016. On 22.8.2016 when the case was taken up, the Investigating Officer, who was present in Court informed us that the detainee had been removed to an undisclosed destination even before the Police reached the 7<sup>th</sup> respondent's house. However, he assured that no effort would be spared to trace her out. The case was therefore adjourned to 25.8.2016 for production of the alleged detainee.

9. After the case was so adjourned, the Additional Director General of Prosecutions mentioned the matter again in Court during the course of the day informing us that the alleged detainee had come to Court along with the 7<sup>th</sup> respondent and therefore, requested that

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the matter be taken up. Accordingly, the matter was taken up. Adv.P.Sanjay represented the alleged detainee. We have interacted with both the detainee and her parents. She informed us that she had completed her BHMS Course and was about to commence her House Surgeoncy. She came under the influence of Muslim religion, having heard about the teachings of the religion from her room mates. She had therefore attended a course at Satyasarani and had become Muslim by conversion. She refused to accompany her parents. She maintained that the 7<sup>th</sup> respondent was her guardian. She wanted to continue her residence with the 7<sup>th</sup> respondent and her family. Though we tried to persuade her to accompany her parents, she did not accede to our request. It was submitted by the parents of the alleged detainee that she had been missing for the past one month and therefore she should not be allowed to accompany the 7<sup>th</sup> respondent. In the above circumstances, she was directed to be accommodated in a ladies hostel, at the expense of her father. A thorough investigation was also

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ordered to be conducted. Thereafter, since the investigation had not been completed, the alleged detainee continued to be accommodated at the Hostel, on the basis of successive orders issued by this Court.

10. In the above circumstances, when the case came up before another Division Bench of this Court on 27.9.2016, the Court interacted with Ms. Akhila again. She refused to go along with her parents. She also submitted a statement in writing dated 27.9.2016 wherein it was stated that for the past 35 days, for no fault of hers, she was in the custody of the Court, without being permitted to interact with anyone else. It was alleged that the present writ petition was filed at the instance of her father's lawyer. The said statement forms part of the records of this case. She claimed that she wanted to reside at a place of her choice. She has not been issued with a Passport and therefore there was no likelihood of her being taken to Syria, as alleged. After considering the matter, this Court ordered as follows:

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“After hearing learned counsel on both sides, we are of the opinion that in the light of the finding entered by this court in the earlier round of litigation that this Court cannot compel the petitioner's daughter to go and reside with her parents and that she is not in the illegal custody of anyone, this court cannot any longer direct that the petitioner's daughter should continue to reside at Santhinikethan Hostel, Pachalam. When we asked the petitioner's daughter as to whether she is willing to appear on another day, she submitted that she will appear on the next hearing date. Learned counsel for the detinue also submitted that the detinue will be present in person on the next hearing date. We accordingly permit the detinue to reside at a place of her choice. We also record the statement of Ms.Akhila that she proposes to reside with the seventh respondent, Smt.A.S.Sainaba, whose address is mentioned in the instant writ petition. Sri.P.K.Ibrahim, learned counsel appearing for the seventh respondent submitted that the seventh respondent will cause production of the petitioner's daughter on the next hearing date, if she proposes to reside with her. If the petitioner's daughter proposes to shift her residence and to reside elsewhere, we shall inform that fact to the Deputy Superintendent of Police, Perinthalmanna in writing and furnish her full residential address and the telephone number if any over which she can be contacted. Call on 24.10.2016. The

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Deputy Superintendent of Police, Perinthalmanna shall cause production of the petitioner's daughter on that day. It will be open to the parents of Ms.Akhila to meet and interact with her.”

Accordingly, Ms. Akhila was permitted to reside with the 7<sup>th</sup> respondent.

11. In the above circumstances, on 14.11.2016 when the case came up before us, the counsel for the petitioner expressed serious apprehension regarding the continued residence of Ms. Akhila in the house of the 7<sup>th</sup> respondent. It was pointed out that, though she had completed her BHMS Course, since she had not undergone House Surgeoncy, which is part of the course itself, she was not competent to practice her profession. Allegations regarding forcible conversion of Ms.Akhila by respondents 6 and 7 were reiterated. The counsel for respondents 6 and 7 however refuted the allegations and contended that Ms.Akhila was free. The Senior Counsel Sri.S.Sreekumar, who appeared for Ms.Akhila, on the said date maintained that she was practicing Homeopathy and was earning an

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income sufficient to maintain herself. This Court was also worried about the source of income of the 7<sup>th</sup> respondent, since it was alleged by the counsel for the petitioner that she was only part of an organization that had unlimited financial resources. Therefore, this Court directed the filing of separate affidavits disclosing the sources of income of 7<sup>th</sup> respondent as well as Ms.Akhila. The 7<sup>th</sup> respondent was directed to produce her Ration Card and the details of the income of her husband. The first respondent was also directed to probe into the above aspects and submit a report.

12. On 19.12.2016, after noting that Ms.Akhila had not completed her course and acquired competence to practice Homeopathy, we expressed our opinion that she should complete her House Surgeoncy without further delay and obtain eligibility to practice. Senior Counsel Sri.S.Sreekumar submitted that she has to complete her House Surgeoncy at Shivaraj Homeopathic Medical College at Salem, which has a Hostel for girl students where



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Ms.Akhila was willing to reside for the purpose of completing her House Surgeoncy. The petitioner who was present in Court offered to bear the expenses for her education and stay at the Hostel. Therefore, we passed the following order :

“We have heard the learned Senior counsel Sri.S.Sreekumar, who appears for the detenu. We have perused the affidavit dated 26.11.2016 filed by the detenu producing documents, Exts.R8(d) and R8(e). We are not prepared to rely on Ext.R8(d) which purports to make it clear as though a registered Homeopathic Medical Practitioner has permitted the detenu to work as a trainee in Homeopathic Medicine on a remuneration of Rs.2000/- per month for her day today expenses. We fail to understand how the detenu, who has not obtained a degree in Homeopathy can be permitted to train under him. The detenu has admittedly not completed her House Surgeoncy or obtained eligibility to practice. Therefore, it is only appropriate that she completes her House Surgeoncy without further delay and obtains eligibility to practice Homeopathic Medicine. Her Senior counsel Sri.S.Sreekumar informs us that, the detenu is desirous of completing her House Surgeoncy. However, we place on record our dissatisfaction at the continued residence of the detenu with the 7<sup>th</sup>

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respondent, who is a stranger. The counsel for the petitioner also expresses anxiety and concern at her continued residence with the 7<sup>th</sup> respondent. He is anxious about the safety and well being of the detinue. His anxiety and concern as the parent of an only daughter is understandable. Therefore, it is necessary that the detinue shifts her residence to a more acceptable place, without further delay. According to the learned Senior counsel Sri.S.Sreekumar, she has to complete her House Surgeoncy at the Sivaraj Homeopathic Medical College, Salem. The college has a hostel for girl students where she is willing to reside and complete her House Surgeoncy. The petitioner offers to bear the expenses for her education and stay at the Medical College Hostel. He offers to escort her to the Medical College and to admit her into the Hostel there. The detinue is also, according to the learned Senior counsel, willing to accompany her.

2. In view of the above, there shall be a direction to the detinue to appear before this Court at 10.15 a.m on 21.12.2016. The petitioner shall also be present in person in Court on the said date. The petitioner who is stated to be in possession of the certificates of the detinue shall bring such certificates also to Court. We shall pass further orders in the matter, regarding the manner in which the detinue is to be taken to the Medical College and admitted to the ladies hostel, on

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21.12.2016.

Post on 21.12.2016.”

It is necessary to mention at this point of time that the order on 19.12.2016 was passed considering the best interests of Ms.Akhila, who had abandoned her studies at a point of time when she was on the verge of acquiring a respectable professional qualification. The concern of the father was in ensuring that his daughter acquired a professional degree as early as possible so as to make her self sufficient or independent. The prospect of completing the degree would become bleak with the passage of time, it was pointed out. Thus the case stood posted to 21.12.2016 for appearance of the detainee and the petitioner.

13. However, on 21.12.2016, Ms.Akhila appeared before court accompanied by a stranger. When questioned, the Senior Counsel Sri.S.Sreekumar informed the Court that she had got married to the young man, who was accompanying her, according to Muslim religious rites on 19.12.2016. This Court was also informed that the

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marriage was performed by the Khazi of Puthoor Juma Masjid in the presence of relatives of both family at the house of the 7<sup>th</sup> respondent. Certificates to evidence the marriage were also made available. This Court was seriously perturbed and concerned at the subterfuge practised. The turn of events was contrary to all the submissions made by the learned Senior Counsel on the previous posting date. Since the marriage of Ms. Akhila was a totally unexpected event, we perused the documents produced before us, noticed the discrepancies therein, noted the necessity of ascertaining the veracity of the statements made, and recorded our dissatisfaction at the manner in which the entire exercise was accomplished. This Court noted in the said order that not even an indication of the marriage was given to us at the time of passing the order dated 19.12.2016, though the alleged marriage was also on the same day. We also expressed our dissatisfaction at the conduct of the detinue, the 7<sup>th</sup> respondent and others, who were involved. We wanted the antecedents of

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the bride groom to be enquired into by the Police. We passed a detailed order recording our dissatisfaction and directing the detinue to be accommodated at a ladies hostel until a proper investigation into the matter was completed.

The order dated 21.12.2016 reads as follows:

"This Writ Petition is filed by the father of Ms.Akhila alleging that, she was misled, misguided and forced to become a Muslim. Various other allegations, relating to links with extremists Muslim Organizations are also made in the Writ Petition. Initially, as per order dated 22.8.2016 we had directed the detinue to be accommodated in the SNV Sadanam Hostel, Ernakulam till the next posting of the case. She had been so accommodated till 27.9.2016. On the said date, another Division Bench of this Court took note of the statements made by the detinue that she was not willing to go home with her parents and that she wanted to go and reside at a place on her choice. It has been noted in the said order that the detinue had not been issued with a passport and that, there was nothing to indicate that she would be taken out of the country. She was therefore permitted to accompany the 7<sup>th</sup> respondent and to reside along with her at her address mentioned in this Writ Petition. The undertaking of the counsel for the 7<sup>th</sup> respondent that she would be produced before Court on

the next posting date was recorded. This Court has also assured that if she proposed to shift residence, the said fact should be informed to the Deputy Superintendent of Police, Perinthalmanna in writing and that her full residential address and telephone number should also be made available. Accordingly, she has been residing with the 7<sup>th</sup> respondent.

2. In a subsequent order, in the light of the allegations regarding forcible conversion of the detinue, we directed the detinue as well as the 7<sup>th</sup> respondent to file separate affidavits disclosing their sources of income. We noticed that, the detinue though had completed her course in Bachelor of Homoeopathic Medicine (BHMS) she had not completed her House Surgeoncy course. Nor had she obtained eligibility to practice Homoeopathic medicine. The first respondent was also directed to probe into the said aspects and to place a statement on record with supporting documents regarding the income of the said persons. The case came up again before us on 19.12.2016. The detinue was not present in Court. However, she had filed an affidavit producing Exts R8(d) and R8(e) documents. Ext R8(d) was produced to show that she was having an income of Rs.2,000/- per month which was being given to her as remuneration by a registered Homoeopathic Medical Practitioner with whom she was alleged to be working. His name is Dr.Sameer Pookkayil. On the said date, we

were informed by her senior counsel Sri.S.Sreekumar that she was desirous of completing her House Surgeoncy course and that for the purpose she was willing to go back to the college from which she completed her BHMS course and to reside in the ladies hostel there. The petitioner offered to bear the expenses for her course. Therefore, we had directed the detinue to be present in Court today. Accordingly, she is present.

3. But, today she is accompanied by a stranger and when questioned, we are informed by the learned Senior Counsel Sri.S.Sreekumar that the said person is her husband and that she had got married to him on 19.12.2016, according to Muslim religious rites. It is stated that, the marriage was performed by the Khazi of Puthoor Juma Masjid in the presence of guests and relatives of both the family as per Islamic shariat law at Srambikal house, Puthoor. Incidentally, Srambikal house is the residence of 7<sup>th</sup> respondent as disclosed from the Writ Petition. The certificate is seen to have been issued by the Secretary of an organization by name Thanveerul Islam Sangham, Puthur, Kottakkal, Malappuram District. We do not understand who are the relatives of the detinue, who had attended the marriage. The learned senior counsel Sri.S.Sreekumar explains that, only the relatives of the bride groom had attended and attributes the statement in the certificate to the loose expression

of language by the person, who had issued the same. We do not know what is the organization that has issued the certificate. It is not clear whether it is even registered. Whether it is only a paper organization alone, also requires to be ascertained. The certificate which is a photocopy dated 20.12.2016 is taken on file and shall be retained as part of the records of the case. The learned Senior Counsel has also handed over to us photostat copies of receipts issued by the Othukkungal Grama Panchayat on 20.12.2016, evidencing payment of money for registration of the marriage between one Shafin Jahan and Hadiya. However, the name that appears in the marriage certificate is Shefin Jahan. The name of the girl is mentioned as Hadiya, daughter of Akhil Asokan, which doesn't make sense. The identities of the persons who are referred to in the certificates require to be verified and ascertained with certainty, in the first place, apart from the genuineness of the organization that has issued the same.

4. We have questioned the petitioner who is present in Court. According to the petitioner, he has had no information about the marriage of the detainee. The learned Government Pleader alleges that, the marriage has been hurriedly conducted, after we had passed our order dated 14.12.2016 and the subsequent order on 19.12.2016. According to the learned Government Pleader, the 7<sup>th</sup> respondent had been involved in another



case of forcible conversion in which, the detenue had been set at liberty. In the statement given by the detenue in the said case, before the Judicial First Class Magistrate, Pattambi under Section 164 of the Code of Criminal Procedure in Crime No.510 of 2016 of Cherpulassery Police Station, she has stated that one Sainaba had advised her to marry a muslim, so as to avoid any interference by the Court. The said case, according to the learned Government Pleader is still under investigation. We are also told by the learned Government Pleader that the Sainaba to whom reference is made by the detenue in her Section 164 statement referred to above, is none other than the 7<sup>th</sup> respondent in this case. At this stage, Advocate P.K.Ibrahim, who appears for the 7<sup>th</sup> respondent raises an objection pointing out that his client has not been made an accused in any case till date. Nor does he or the 7<sup>th</sup> respondent have any knowledge of the statement referred to above. The objection is recorded. According to the learned Government Pleader therefore, this is a case in which the detenue has been forced or misled into undergoing a ceremony of marriage in accordance with Islamic religious rites. It is also pointed out that, the so-called marriage is only a ploy to defeat the present proceedings that are pending before this Court and to see that the detenue is not freed from the custody of the persons into whose clutches and influence she has

fallen.

5. According to the counsel for the petitioner, on the other hand, the detinue is his only daughter. Though she has attained majority, it is contended that, he is anxious about her safety and well being. He is afraid that she is being led astray. This is the second time that he has approached this Court with a petition for habeas corpus. It is contended that, as a parent it is his right to give away his daughter in marriage and to ensure that the person who marries her is a suitable person.

6. The learned Senior Counsel Sri.S.Sreekumar submits that, since the detinue is present in Court this Court may interact with her and verify whether it was under the influence of anyone else or under coercion that that her marriage was performed, as alleged. We shall interact with the detinue, at the appropriate time. We are not satisfied that it is necessary to interact with her at present.

7. As noticed above, on 14.11.2016 we had expressed our dissatisfaction in our order about the continued residence of the detinue with the 7<sup>th</sup> respondent who is admittedly a stranger. Her parents are alive and the petitioner is before us, seeking a writ of habeas corpus levelling a slew of allegations against respondents 6 and 7. We also notice that the detinue has entered appearance through a counsel and has been

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contesting this matter on her own with the assistance of a Senior Counsel also. She has changed her former counsel, Advocates P.Sanjay and Parvathi and is presently being represented by Advocate C.N.Mohammed Iquabal who has given a senior engagement to Advocate S.Sreekumar. We therefore, wanted the detinue as well as the 7<sup>th</sup> respondent to disclose their sources of income. We have dealt with the documents produced as Exts R8(d) and R8(e) in our order dated 19.12.2016. We also expressed our view that it was necessary for the detinue to complete her House Surgeoncy and to obtain eligibility to practice Homoeopathic Medicine, in which she had completed her Degree course. However, we were not given even an indication of a proposed marriage at that time. We notice that, the marriage of the detinue that is stated to have been conducted, was on 19.12.2016, the date on which we had passed our order directing her to be produced before us today. We had also directed the petitioner to bring to Court all her certificates so as to enable her to obtain admission to the Medical College Hostel at Salem. It is in the above context that we are informed all on a sudden that she has got married. The entire conduct of the detinue, the 7<sup>th</sup> respondent and others who may have been involved leaves a lot to be desired. This petition filed by the father seeking the release of his daughter, by the issue of a writ of habeas corpus has

been pending since 16<sup>th</sup> August, 2016. The detinue was residing with the 7<sup>th</sup> respondent as per an earlier order passed by this Court. This court exercising its Parens Patriae jurisdiction is anxious and concerned about the safety of the detinue and her well being, viewed especially in the light of the allegations made in the Writ Petition and the continued obstinance of the detinue to return to her parents. The person who is stated to have got married to the detinue has appeared before us today, for the first time. He claims to be a graduate and a person who is employed in the Gulf. It is stated that, he is desirous of taking the detinue out of the country. It was precisely the said apprehension that was expressed by her father in the proceedings before this Court on the earlier occasion. This Court has on the said occasion recorded the fact that since she was not possessed of a Passport, there was no likelihood of her being taken to Syria. The question that crops up now is whether the marriage that has been allegedly performed is not a device to transport her out of this country. We are not aware of the identity of the person who is alleged to have got married to the detinue. We are not aware of the antecedents of the said person or his family background. The address mentioned in the marriage certificate produced shows that he is from Kollam. In what manner he has come into contact with detinue and under what circumstances, the detinue has agreed to get married to

a stranger like him are matters that require to be probed thoroughly. The marriage certificate shows that the marriage was performed by the Khazi at the house of the 7<sup>th</sup> respondent, Srambikal House, Puthur. Why the marriage was conducted at her house is not clear. Unless the above questions are answered, it cannot be accepted that the detainee is in safe hands. This Court exercising Parens Patriae jurisdiction has a duty to ensure that young girls like the detainee are not exploited or transported out of the country. Though the learned Senior Counsel has vociferously contended that the detainee is a person who has attained majority, it is necessary to bear in mind the fact that the detainee who is a female in her twenties is at a vulnerable age. As per Indian tradition, the custody of an unmarried daughter is with the parents, until she is properly married. We consider it the duty of this Court to ensure that a person under such a vulnerable state is not exposed to further danger, especially in the circumstances noticed above where even her marriage is stated to have been performed with another person, in accordance with Islamic religious rites. That too, with the connivance of the 7<sup>th</sup> respondent with whom she was permitted to reside, by this Court.

8. We place on record our absolute dissatisfaction at the manner in which the marriage if at all one has been performed, has been conducted. The 7<sup>th</sup>

respondent having been a party to these proceedings had a duty to at least inform this Court of the same, in advance. This Court had relying on her credentials and assurance, permitted the detinue to accompany her and to live with her. We would have expected a reasonable litigant, which includes the detinue also who as we have noticed earlier, is represented through an eminent Senior Counsel of this Court, to have informed this Court and obtained permission from this Court before such a drastic course was undertaken. Considering the manner in which the marriage has been conducted, the secrecy surrounding the said transaction and also the hurried manner in which the whole exercise was completed, the entire episode is shrouded in suspicion. Unless the suspicion is cleared the detinue cannot be permitted to go with the person who is seen to be accompanying her now.

In view of the above, the following directions are issued.

1) The first respondent is directed to escort the detinue and to have her accommodated at the S.N.V.Sadanam Hostel, Chittoor Road, Ernakulam, until further orders. The first respondent shall ensure that she is not provided the facility of possessing or using a mobile phone. The petitioner and the mother shall be at liberty to meet her according to the rules and regulations of the hostel. No other person is permitted to meet her.

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2) The first respondent shall cause an investigation to be conducted into the education, family background, antecedents and other relevant details of Sri.Shafin Jahan who is stated to be the bridegroom of the alleged marriage that is stated to have been conducted on 19.12.2016 as evidenced by the certificate dated 20.12.2016 produced before us. The first respondent shall also enquire into the circumstances surrounding the conduct of such marriage, the persons who were involved in the conduct of the same the organization that has issued the marriage certificate, as well as their antecedents. A report of such investigation shall be placed before us before the next posting date of this case. The 4<sup>th</sup> respondent shall oversee the investigation and see that all relevant details are unearthed and placed before us including any links with extremist organizations, of which allegations are made in the Writ Petition.

3) The Secretary, Othukkungal Grama Panchayat is directed not to issue the marriage certificate sought for by the applicants Shafine Jahan and Hadiya as per receipt dated 20.12.2016, without further orders from this Court.

The petitioner shall bear the expenses for the accommodation of the detenue at the hostel.

Post on 6.1.2017.”

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Accordingly, Ms. Akhila has been residing at the Hostel, till date.

14. In the above circumstances, this case was taken up again on 6.1.2017. On the said day, the Government Pleader placed before us a report dated 4.1.2017 of the Deputy Superintendent of Police, Perinthalmanna. However, on perusal, we found the report to be absolutely unsatisfactory. Therefore, we passed an order on 6.1.2017 placing on record our anguish at the lack of fortitude in pursuing the investigation. We also issued a direction to the 4<sup>th</sup> respondent, Director General of Police, to oversee the investigation, considering the seriousness of the matter. The said order reads as follows:

“Read our earlier order dated 21.12.2016.

2. The detinue has been produced before us, pursuant to the direction in our order dated 21.12.2016. The petitioner as well as Sri.Shafine Jahan, who is stated to have married the detinue, is also present in Court. We have heard the learned Government Pleader, the learned Senior Counsel Sri.S.Sreekumar, who appears for the detinue, Sri.C.Rajendran, who appears for the



petitioner as well as Sri.P.K.Ibrahim, who appears for the seventh respondent.

3. The learned Government Pleader has placed before us a report dated 04.01.2017 of the Deputy Superintendent of Police, Perinthalmanna, who has conducted an investigation into the entire episode noticed by us in our order dated 21.12.2016, as per the directions contained therein. However the report is absolutely perfunctory and does not shed any light on the aspects on which we wanted the investigation to be conducted. There is nothing on record to indicate that, either the detainee or Sri.Shafine Jahan had any acquaintance with each other before the marriage that is alleged to have taken place. The report does not indicate how and in what circumstances, the decision to conduct the marriage was taken and by whom? It is stated that, no relative of the bride was present but that as many as 50 people had participated in the ceremony. We have in our earlier order, noticed the circumstances under which, we were all on a sudden informed that the detainee had got married according to the Islamic religious rites. Her parents are Hindus. On the basis of the information conveyed to us by her Senior Counsel that the detainee was desirous of continuing and completing her studies, we had posted the case on the said date for the purpose of passing orders regarding her continued education and completion of her course

which she had left unfinished. She was a student of Homeopathic Medicine. According to the learned Government Pleader, the investigation is still in progress, with the co-operation of the Cyber Cell and some more time is required for the investigation to be completed.

4. The learned Senior Counsel Sri.S.Sreekumar however complains that the detainee has been living a life of isolation in the Hostel where she is accommodated as per the orders of this Court. She wants to be set at liberty so that she could continue her studies. However, it was relying upon the said submission that, we had posted the case on 19.12.2016 for the purpose of issuing directions regarding her continued education. She has been accommodated in the Hostel only for the reason that she is unwilling to accompany her parents or to return home. Such accommodation has been ordered only for the purpose of ensuring her safety. Though the detainee was permitted to reside with the 7<sup>th</sup> respondent, she has proved to be unworthy of such trust by her conduct. She has been party to the alleged marriage of the detainee, which is stated to have been conducted at her house. Therefore, the detainee has to continue her residence at the Hostel, for the time being. However, since the detainee is accommodated in a Hostel at present, it is necessary that the investigation is completed at the earliest so that, this writ petition could be finally disposed of without delay. Though the learned

Government Pleader has requested for the grant of further time for the purpose of completing the investigation, we are of the view that these proceedings cannot be kept pending indefinitely.

5. In view of the above, we direct the Investigating Officer to complete the investigation within a period of two weeks. The Investigating Officer shall be at liberty to apprise the Cyber Cell of the urgency of the situation and the pendency of these proceedings, for the purpose of expediting the process of investigation. The Investigating Officer may also meet the detenue for the purpose of recording her statement for probing the circumstances under which the alleged marriage had taken place. We place on record our dissatisfaction at the investigation conducted so far. Though we had clearly indicated in our order dated 21.12.2016 regarding the aspects on which we wanted clarity through a proper investigation, the Investigating Officer does not appear to have taken into account any of the said circumstances. He shall therefore go through a copy of our order dated 21.12.2016 also and shall have the investigation conducted touching upon the various aspects referred to by us in the said order. We direct the fourth respondent to oversee the investigation giving due seriousness to the issue that the life of a young girl is at stake. We expect a better, more comprehensive and proper report to be placed before us by the next posting

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date.

Post on 23.01.2017 at 1.45 p.m. The detainee shall be produced on that day.”

Accordingly, a further report was submitted by the Deputy Superintendent of Police dated 30.1.2017. As per his report, it was stated that the alleged marriage of Ms.Akhila was conducted with the active involvement of the 7<sup>th</sup> respondent and without informing her parents. Therefore, we directed the 7<sup>th</sup> respondent to explain the circumstances under which the marriage proposal originated, the person at whose instance the detainee was registered at the matrimonial site and the manner in which the marriage proposal was considered and conducted. As per order dated 7.2.2017, we called for a report from the Police regarding the criminal antecedents of Sri. Shefin Jahan, who is alleged to have married Ms.Akhila. The case came up before us thereafter on 22.2.2017. On the said date, the 7<sup>th</sup> respondent filed a further affidavit and the Senior Government Pleader produced three additional documents along with a memo. They were also taken on record.

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Thereafter, the matter was heard. Since the counsel for the 7<sup>th</sup> respondent requested for further time to complete his arguments, he was granted further time.

15. According to Adv. C.Rajendran, who appears for the petitioner, Ms.Akhila is the only child of her parents. She was born a Hindu and was brought up in accordance with the Hindu faith. She was influenced and brainwashed by the two sisters, Ms. Jaseena and Ms.Faseena with the active involvement of their father Sri.Aboobacker. She was taken to various places and institutions where numerous persons had grilled her with fanatic interpretations of Quran and other sacred texts of the Islam religion. She was taken to various places with the object of forcing her to accept the Islamic faith. While joining BHMS Course, she was less than 20 years old and was in her impressionable age. Her vulnerable situation was taken advantage of to instill into her mind a hostility against even her parents, who had given birth to her and brought her up. Our attention is drawn to the statement filed by the Deputy Superintendent of Police

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to point out that, the involvement of one Sri.Shanib, his cousin Smt.Sherin Shahana and her husband Sri.Fasil Musthafa in influencing the mind of Ms.Akhila has been kept a secret by all the persons, who were involved. Attempts are made to safeguard Sri.Aboobacker, father of Ms.Jaseena and Ms. Faseena. It is contended that, the 6<sup>th</sup> respondent is an Organization that is aiding and facilitating illegal and forceful conversions. According to the counsel, the Organization has at its disposal unlimited resources in finances as well as manpower. Sri. Shefin Jahan is one such person who has been assigned to play the role of going through a sham of a marriage with Ms.Akhila, with the object of transporting her out of India. According to the learned counsel, it was with the said objective that the entire sequence of events had been planned and executed. The marriage was conducted in a hasty manner with the object of overreaching the jurisdiction of this Court.

16. According to the learned counsel, the petitioner's daughter, who was about to complete her BHMS

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Course by undergoing her House Surgeoncy, has been misled and influenced even to the extent of persuading her to abandon her studies and to leave her parents. She is a prisoner of the wrongful influence of respondents 6 and 7 and their Organization. She is not capable of even thinking properly at present. Respondents 6 and 7 have influenced her mind to such a great extent that, she would do anything for them. She is therefore in a vulnerable position from which she is necessary to be rescued and handed over to the petitioner, who shall take care of her and protect her from the evil influences that are now controlling her thought and actions. For the purpose, it is absolutely necessary, this Court issues appropriate writs and orders. According to the learned counsel, parental authority and control does not cease to exist the moment a child attains majority. The authority of the parents continues even in respect of a person who has attained majority, to protect the said person from going astray. Our attention is drawn to the decision of another Division Bench of this Court in Lal Parameswar v.

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Ullas (2014 (1) K.L.T. 937), in support of the above contention.

17. The counsel has also placed reliance on the decision of a learned Single Judge of this Court in Shahan Sha A v. State of Kerala (2010(1) KHC 121) to point out that, this Court has recognized the existence of forcible conversion by radical groups working in various parts of Kerala influencing young girls from other communities and forcibly converting them to the Islamic faith. The counsel also places reliance on the situation that was brought to light in W.P.(Crl.) No. 235 of 2016, another habeas corpus petition pending before this Court. In the said case, another Hindu girl by name Ms.Athira, who had been forcibly persuaded to embrace Islam was directed to be sent along with her parents. The learned counsel points out that, the modus operandi in the said case is similar to the one adopted in this case with the only difference that instead of the 7<sup>th</sup> respondent, there was another lady with whom the girl in the said case was residing. It is therefore contended



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by the learned counsel that, this is a case in which the petitioner's daughter should be directed to accompany the petitioner and to return home. Otherwise, her career as well as future would be at peril, it is contended.

18. The Senior Government Pleader, who represents respondents 1 to 4 generally supports the contentions put forward by the counsel for the petitioner. Pursuant to the orders passed by us at various stages of this writ petition, a number of reports have been filed before us, placing on record the details of the investigation conducted by the Police and the conclusions that follow from such investigation. According to the learned Senior Government Pleader, Ms.Akhila, though born of Hindu parents and brought up as a Hindu, had been subjected to influences of various kinds at the instance of a number of people with the object of converting her and compelling her to accept the Islamic faith. The efforts started at the instance of her room mates Ms.Jaseena and Ms. Faseena and was continued by their father Sri.Aboobacker and later on by Sri.Shanib, his

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cousin Smt.Sherin Shahana and her husband Sri.Fasill Musthafa. It was thereafter that, the 6<sup>th</sup> and 7<sup>th</sup> respondents took over. According to the learned Senior Government Pleader, Ms.Akhila has been influenced by feeding her with graphic details of hell and the torments that sinners are subjected to in their life after death. She has also been made to believe that in order to escape from the torments of hell, acceptance of the Islamic faith was the only way. According to the report dated 15.12.2016, it is stated that Ms.Akhila believed that Islam would help her to reach heaven after death. According to the learned Senior Government Pleader also, this is a case of forcible conversion to Islam. It is contended that, the alleged detainee Ms. Akhila is not capable of taking an informed decision on her own, having been influenced by respondents 6 and 7.

19. It is further pointed out that, the alleged marriage of Ms.Akhila is only a sham, intended to scuttle the jurisdiction of this Court. Mr. Shefin Jahan, the alleged

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bride groom, is a worker of the Organization that is behind the conversion. He has criminal antecedents and is an accused in a criminal case. The marriage is only a camouflage to cover up the real object of respondents 6 and 7 to take Ms.Akhila out of the country. According to the Senior Government Pleader, Sri.Shefin Jahan was in some Gulf country. He is jobless at present having left the Gulf on an exit visa. Though he claims that he has obtained a job at a place called Asiba, Oman, he is present in court on all the posting dates of this case after the date of alleged marriage. Therefore, it is contended that he is still jobless.

20. It is pointed out by the learned Senior Government Pleader that, though the marriage is alleged to have taken place on 19.12.2016, the fact remains that Sri.Shefin Jahan, who is very active on face book had not disclosed the same in his face book page. He is a person who has posted on the face book, even minor details of his everyday life. While so, a news item appeared in the Mathrubhumi daily dated 10.1.2017 regarding the direction

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of this Court to the Police to probe the details of the marriage of Ms.Akhila. It was only thereafter at 9.55 p.m. on 10.1.2017 that Sri.Shefin Jahan posted the photo of his Nikah in the face book. He has also updated his profile picture with his own photo and the photo of Ms.Akhila. The above circumstances are relied upon to point out that no genuine marriage had taken place on 19.12.2016. Sri. Shefin Jahan's explanation that it was only on account of the interim order of this Court directing the Panchayat not to register their marriage that he had not disclosed his marriage in his face book account is only a make-believe. It is not a convincing explanation.

21. The learned Senior Government Pleader also points out various discrepancies in the entries made in Exts.R1(a) and R1(b) to contend that, the said documents cannot be accepted as genuine. The discrepancy in the name that is said to have been adopted by Ms.Akhila after she had embraced Islam also varies, it is pointed out, strengthening the suspicion that surrounds the entire

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sequence of events in the present case.

22. According to the learned Senior Counsel Sri.P.Ravindran, who appears for the 6<sup>th</sup> respondent, the said institution is a charitable trust engaged in providing instructions and education to persons from other religions who have embraced Islam. Courses of different duration are conducted by the institution. The inmates are provided with books and study materials. They are imparted instructions and training in the various aspects of Islamic faith so as to prepare them to follow the religion in its true spirit. Ms.Akhila had undergone a two month's course. She was neither influenced nor forced by the 6<sup>th</sup> respondent as alleged by the petitioner. The allegations in the writ petition are false and baseless. All the allegations have been denied by a proper counter affidavit filed in the case. Therefore, the learned Senior Counsel seeks dismissal of the writ petition.

23. Adv. P.K. Ibrahim, who appears for the 7<sup>th</sup> respondent points out that, the petitioner had earlier

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approached this court by filing W.P.(Crl.) 25 of 2016. Another Division Bench of this Court had interacted with Ms.Akhila and found that she was a major, capable of taking independent decisions on her own and had permitted her to accompany the 7<sup>th</sup> respondent since she was not willing to go with her parents. Thereafter, she has been living with the 7<sup>th</sup> respondent, who was taking care of her. She has appeared before this Court on all occasions on her own, demonstrating that she was not under any illegal detention, that she was free to pursue her own convictions and beliefs. The allegation of the petitioner therefore that she under the illegal detention of the 7<sup>th</sup> respondent is false and baseless. In the present writ petition also, she had appeared in court on her own. She had not evaded the process of court at any time. She is represented in these proceedings through counsel, whom she has engaged. Therefore, the allegation that she is under illegal detention, does not stand to reason and can only be rejected. According to the learned counsel, the 7<sup>th</sup> respondent has sufficient income to maintain

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Ms.Akhila. She provides services as a Counsellor earning Rs.2,000/- from family counselling. A further amount of Rs.7,000/- is earned by her from assisting the cashew nut business of her husband. Her husband Sri.Aliyar earns an amount of Rs.15,000/- as profit from his business. She has agricultural income of Rs.2,40,000/- per year. The said income is sufficient to take care of Ms.Akhila, it is contended. The 7<sup>th</sup> respondent is a social worker and therefore, there is nothing wrong in her act of providing help to Ms.Akhila in her time of need. She is only activated by the kindness that is necessary to be shown to any young lady in distress.

24. According to Adv.P.K.Ibrahim, the alleged detainee has a fundamental right under Article 25 of the Constitution guaranteeing her freedom of conscience and expression. She being a person who has attained majority has the freedom to follow a faith of her choice and no one, not even her parents, have the authority to stand against her wishes. She had decided to reside with the 7<sup>th</sup>

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respondent who was responsible for her safety and security. In April, 2016, she had expressed her desire to get married to a Muslim. Accordingly, her name had been registered in the matrimonial site by name 'way to Nikah'. It was through the site that, the proposal of Sri. Shefin Jahan had come. She had interacted with the said person and had decided to get married to him. According to the learned counsel, the 7<sup>th</sup> respondent has only acted as per her wishes, which fact is evident from her affidavits filed in this case. Therefore, it is contended that, the above writ petition is only to be dismissed. The learned counsel has also places reliance on a number of decisions of the Apex Court where the right of a female who has attained majority to choose a person as her spouse, though belonging to a different religion, has been recognized. Following the said dicta, it is contended that Ms.Akhila also may be permitted to accompany her husband and to live a life in accordance with her wishes. The allegations made in the writ petition against the 6<sup>th</sup> and 7<sup>th</sup> respondents are stoutly disputed by the counsel as mere



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figments of imagination of the petitioner.

25. As we have already noticed above, the alleged detainee Ms.Akhila has appeared in this case through a lawyer. She has also sought to get herself impleaded as an additional respondent in this case. Though we have not allowed the impleading petition, she has filed a counter affidavit as well as other petitions in these proceedings, describing herself as the 8<sup>th</sup> respondent. We place on record the fact that initially Adv.P.Sanjay and Smt.Parvathy Menon had appeared for Ms.Akhila. They have filed I.A. No. 14827 of 2016 to implead Ms.Akhila as the additional 9<sup>th</sup> respondent in the writ petition. The same is dated 4.9.2016. She has thereafter filed a counter affidavit in the writ petition describing herself as the 8<sup>th</sup> respondent, which is dated 24.10.2016. However, as per the records of this Court, and the information furnished by the Registry, no vakalath was filed by the said advocates for Ms. Akhila. Subsequently, Sri.C.M. Mohammed Iquabal started representing Ms.Akhila along with Senior Counsel

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Sri.S.Sreekumar. An additional counter affidavit dated 26.11.2016 was filed thereafter producing two additional documents Exts. R8(d) and R8(e). Sri.C.M. Mohammed Iquabal has started appearing for Ms. Akhila without obtaining a no-objection certificate from the former counsel, which would have been necessary, had Adv. P.Sanjay and Smt. Parvathy Menon filed their vakalaths. There is no explanation forthcoming for the above discrepancy.

26. The counsel for Smt. Akhila towed the line of argument pursued by Adv. P.K.Ibrahim on behalf of the 7<sup>th</sup> respondent. According to the Counsel, Ms. Akhila became attracted to the teachings of Islam and her friends Ms. Jaseena and Ms.Faseena only helped her in providing a means of learning more about Islam. Thereafter, Sri.Aboobacker only tried to put her in some institution that would provide her necessary instruction in the pursuit of her studies of Islam. She has narrated in detail, the circumstances under which she had to leave her parents and

her home and take refuge with the 7<sup>th</sup> respondent. She has attained majority. She is a graduate in BHMS and is possessed of sufficient knowledge and capacity to take an informed decision on her own. She had refused to go with her parents because she was certain that she would not be permitted to pursue her faith, in her house. According to her, she had registered her name in the matrimonial site. Sri. Shefin Jahan's proposal had come through the said site. She had interacted with the said person. The marriage was conducted with her full knowledge and consent. The allegations made against her husband by the petitioner are baseless. He has no connection with any extremist organization. He is an active member of the political party, Social Democratic Party of India (SDPI). However, the existence of a criminal case against him is admitted. He has characterized the incident as a political issue with AIYF activists. Our attention is drawn to the fact that he had explained his face book posts and that, they are not to be taken serious note of. In short, according to the counsel, it

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is Ms.Akhila herself who has brought about the present state of affairs in which she is placed. She being a person who has attained majority has every right to do so. It is therefore contended that, this writ petition is only to be dismissed.

27. Heard. Ms.Akhila is a young girl, who is aged only about 24 years at present. She is the only daughter of her Hindu parents. She was brought up as a Hindu, in accordance with the faith of her parents. She had joined the BHMS Course at the Shivaraj Homoeopathy Medical College at Salem. According to her, she had become attracted to the Islam religion about three years prior to her disappearance. She must therefore have been hardly 20 years of age at that time. She had disappeared from her home on 7.1.2016.

28. While studying for her BHMS Course, she was initially residing in the Hostel. She had failed in all her subjects during the first year, but she had cleared the papers later on through supplementaries. While she was

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residing in the Hostel, she complained about the quality of the food served and shifted residence to a house that was taken on rent along with four other friends. It is not in dispute that, initially they had engaged the services of a lady cook, but later on they started preparing food themselves. Ms. Jaseena and Ms.Faseena, who are sisters were her friends. She had frequented their house on various occasions and also had come into contact with their father Sri.Aboobacker. It is an admitted fact that, Sri.Aboobacker had also tried to help her to admit her in some institution providing special courses for converts to Islam. According to the affidavit dated 4.9.2016 filed in support of her impleading petition, I.A. No. 14827 of 2016, she had started following Islam for the past three and a half years. But, she has formally announced the 'change of faith' only now. Ms.Akhila therefore wants to and has been trying to give an impression to this Court that her formal conversion had taken place only in the year 2016. However, a perusal of the Case Diary of Crime No.21 of 2016 of Perinthalmanna

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Police Station ('CD' for short) made available to us by the learned Senior Government Pleader shows that she had sworn to an affidavit on 10.9.2015 before Sri. Devy A.C., Advocate and Notary, Lawyers Line, 2<sup>nd</sup> floor, Infant Jesus Building, Cochin-31. In her affidavit, which is notarized, she states that she was living her life according to the Islamic ethics without anybody's compulsion and that she had chosen a Muslim name, 'Aasiya'. The CD also contains the statement of Smt.Sherin Shahana, aged 20 years, who is the wife of one Sri.Fazal Musthafa, residing at Mangalapuram (Mangalore). She claims to have completed her plus two course and was studying at the Arabic College at Thalassery. She states that she has been residing with her husband for two months at Mangalore. According to her, she was introduced to Ms.Akhila by her cousin (father's younger son) Sri.Shanib who had met her through chatting. She states that Ms. Akhila had contacted her over phone because she wanted to accept Islamic faith and to know about Islam. She claims that they were in constant contact

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over phone. In September, 2015, she had asked Ms. Akhila to reach Ernakulam. Accordingly, they had met at the Kaloor Bus stand, for the first time. Thereafter, they had again met once more. At that time, they had dropped her near her house. She does not know her parents. She had chosen the name 'Aasiya' from among a number of other names suggested by Smt. Sherin Shahana. She also claimed to have talked to Ms.Jaseena and Ms. Fazeena. According to Smt. Sherin Shahana, Ms.Akhila had called her again on 4.1.2016 informing her that she was proceeding to Kozhikode for getting admitted to some institution there to study about Muslim religion. Though she requested her to come to Mangalore, she disconnected the phone offering to intimate her decision later. Thereafter, though she had tried to contact Ms. Akhila on getting information that she was missing from home, her telephone was out of range. According to her, the affidavit of 10.9.2015 was got executed by her husband because of the propaganda around that Hindus were being converted to Muslim

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religion.

29. The statement of her husband Sri. Fasal Musthafa shows that he is aged only 23 years, that he is a person from Kannur. His parents and other members of his family are at Lakshadweep. According to him, he was studying at the Darul Huda Mosque at BC Road, Mangalapuram. He also claims that they were introduced to Ms. Akhila by his wife's cousin, Sri. Shanib, that Ms.Akhila was in constant contact with his wife clearing her doubts about Islam. He is a person who used to visit Ernakulam frequently with his wife. In 2015, September, his wife had called Ms. Akhila when they were at Ernakulam. Thereupon, she had come to the Kaloor Bus stand. It was on the said date that his wife recited the necessary verses and made her accept Islam religion. According to him also, she had assumed the name "Aasiya". She had travelled with him and his wife in their car and was dropped off close to her house. According to him also, he had got the affidavit executed because of the wide propaganda all around that Hindus



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were being converted to Muslim religion.

30. It is worth noticing that the role of Smt.Sherin Shahana and her husband Sri. Fazal Musthafa has not been disclosed by either Ms. Akhila or by the other respondents in this case. It is true that the CD contains the statements of the said two persons. However, Sri. Shanib does not appear to have been questioned. According to Smt. Sherin Shahana, she was in constant contact with Ms.Akhila over telephone. However, the Investigating Officer has not made any attempt to obtain the details of the calls so made or to probe the roles of Sri.Shanib, Smt.Sherin Shahana or her husband, Sri. Fasal Musthafa. No attempt to ascertain the veracity of the statements also has been made. The fact remains that Ms. Akhila has sworn to an affidavit before a Notary assuming the name 'Aasiya' on 10.9.2015. We notice that Smt.Sherin Shahana is a person who has completed her plus two and was pursuing her studies in the Arabic College at Thalassery. They had been staying in Mangalore only for a short period prior to the date of giving

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the statement. Sri.Fasal Musthafa, aged 23 years is studying in a Mosque. The omission to probe the role of the said persons in the entire episode is a serious lapse on the part of the Investigating Officer. Whether any other persons were involved, also has not been probed. The antecedents of the said persons, the nature of the activities in which they were involved as well as other attendant circumstances, would have shed some light on the circumstances that influenced Ms.Akhila to accept Islam. There are clear indications that the said persons are persons involved in the study of Muslim religion.

31. A perusal of the affidavits filed by Ms.Akhila in this Court reveals another discrepancy that relates to her name. We notice that, she had filed W.P.(C) No. 1965 of 2016 along with the 7<sup>th</sup> respondent, who is the 2<sup>nd</sup> petitioner, describing herself as 'Akhila Ashokan @ Adhiya' showing her address as 'Devikripa, T.V. Puram, Vikkam, Kottayam.' It is interesting to notice that Adv. P.K.Ibrahim, the present counsel for the 7<sup>th</sup> respondent in this writ

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petition, was the counsel appearing for the petitioners in the said case. In the said writ petition, they complained against Police harassment. The said writ petition was later on dismissed as withdrawn by judgment dated 21.1.2016. However, there is no explanation as to how Ms. Akhila became 'Adhiya'.

32. In the present writ petition, in her affidavit dated 4.9.2016 as well as in her affidavit filed on subsequent dates, she describes herself as 'Akhila Asokan @ Hadiya'. There is no explanation forthcoming as to how her name has undergone a further change. If the statement of Smt. Sherin Shahana referred to earlier is to be believed, Ms.Akhila had chosen the name 'Aasiya' from a list of names suggested to her. If she had chosen the name 'Aasiya;' as stated, why did she change her name? Is it to create a confusion regarding her identity as contended by the counsel for the petitioner as well as the learned Senior Government Pleader? Or has she been acting at the dictates of some others who have been orchestrating her actions for

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the past few months? Despite repeated directions to the Investigating Officer in this case, the Deputy Superintendent of Police, Perinthalmanna, no investigation worth the name has been conducted. The CD only contains the statements of a number of persons recorded and kept filed therein. No efforts to cross check the veracity of the statements or to unearth further materials by probing the leads that have come up is significantly absent. The Deputy Superintendent of Police, Perinthalmanna, the Investigating Officer, has done no investigation worth the name, in this matter. The investigation in this case was entrusted to him considering the seriousness of the issues involved, the widespread allegations of forcible conversion that were coming up and the national interest that is at stake. However, his conduct in the present case leaves a lot to be desired. Either he has been influenced and subjugated into a studied inaction or he lacks the alertness and competence that is expected of an Investigating Officer probing an issue of such seriousness. The fourth respondent shall therefore initiate

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and conduct a full-fledged enquiry into the lapses on the part of the Investigating Officer in investigating the complaint in this case and shall, if necessary, pursue departmental proceedings against the officer concerned. We do not want to say anything further on this aspect.

33. As already noticed above, the attempt of Ms.Akhila as well as respondents 6 and 7 is to make this Court believe that the entire episode was perpetrated by Ms.Akhila herself who had developed an intense attraction to the teachings of Islam and wanted to embrace the said religion. However, there are too many incongruities that militate against the story that is put forward.

34. In the first place, it is not normal for a young girl in her early 20s, pursuing a professional course, to abandon her studies and to set out in pursuit of learning an alien faith and religion. The normal youth is indifferent towards religion and religious studies. Though the possibility of genuine interest in the study of religion on

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the part of any person cannot be ruled out, such inclination is in the first place out of the ordinary. Though the alleged detainee in this case is stated to have set out to study Islam, her study has been confined to merely attending a course of two months duration conducted by the 6<sup>th</sup> respondent. She does not appear to have conducted any study thereafter. In the present case, the academic records of Ms.Akhila show that she was not a bright student. She had failed in all her subjects in the first year. Of course, she cleared all the papers later. She has completed her BHMS Course and what remains to be completed is only her House Surgeoncy, for acquiring eligibility to practice. What is it that has compelled her to abandon her studies, her parents and her family and to embark upon a pursuit of religious studies? On the admitted facts, she developed an interest in Islam through her contacts with Ms.Jaseena and Ms. Faseena who are her classmates. She has also had interaction and constant contact with Sri.Shanib, Smt.Sherin Shahana and Sri.Fasal Musthafa, who were all in their earlier 20s as we

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have already noticed above. Curiously enough, the Investigating Officer has not considered it necessary to investigate or ascertain the nature of the activities or the antecedents of any of these persons. Ms. Akhila only gives a vague statement in her affidavit that she had acquired knowledge about Islam by 'reading Islamic books and also viewing interesting videos.' What are the materials on the basis of which she had developed an interest in Islam religion is unavailable. Are there any radical organizations involved, are questions that plague an inquisitive mind. But sadly, there are no answers available in this case. Be that as it may, it is not our concern or attempt to decide whether Ms. Akhila should follow Islamic faith or the Hindu faith. The question of faith and religion are matters of personal conviction and this court does not consider it necessary to interfere in such matters that are personal to Ms. Akhila. However, what concerns this Court is the decision of hers that, she does not want to live with her parents. She is from Vaikom in Kottayam District. She was studying at Salem in

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Tamil Nadu. At present, she is at Kottkkal an alien place about 240 KM away from her home town. It is also far away from Salem where she was studying. She has had no acquaintances at the said place in the past. In the context, the role of the 7<sup>th</sup> respondent in providing a haven for her is necessary to be examined. The further conduct of the 7<sup>th</sup> respondent in having the alleged marriage of Ms.Akhila conducted also requires to be scrutinized.

35. As we have already noticed, the petitioner in this case had earlier filed W.P.(Crl.) No. 25 of 2016 seeking a writ of habeas corpus against the detention of Ms. Akhila wherein the 7<sup>th</sup> respondent was not a party. The allegation in the said case was that she was under the illegal detention of Ms.Jaseena and Ms.Faseena and their father Sri.Aboobacker. In the said case also, after this Court had directed the Government Pleader to get instructions by order dated 14.1.2016, Ms.Akhila had entered appearance through counsel, Adv.P.K.Ibrahim on 19.1.2016. She also filed I.A. No. 792 of 2016 to get herself impleaded in the



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writ petition as the 9<sup>th</sup> respondent. The said affidavit is dated 19.1.2016. It was on the previous day, 18.1.2016 that she had filed W.P.(C) No. 1965 of 2016, along with the 7<sup>th</sup> respondent herein as petitioners, alleging Police harassment. In her affidavit, she had put forward the very same contentions, namely that, the entire episode was the result of her own desire to embrace Islam as her faith. This Court accepted her stand in the affidavit, took note of the fact that she was accompanied by the 7<sup>th</sup> respondent and the further fact that she was desirous of joining the 6<sup>th</sup> respondent institution for a course offered by them, and permitted her to pursue her faith. However, this Court took care to insist that proof regarding admission of Ms.Akhila to the institution be produced. Accordingly, documents were produced showing that she had been admitted to the said institution on 20.1.2016. This Court also noted that she was staying in the Hostel of the said institution. Therefore, it was found that there were no grounds available for the issue of a writ of habeas corpus as prayed for in the writ

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petition. In view of the above, the same was disposed of recording the fact that Ms.Akhila was staying at the hostel of the 6<sup>th</sup> respondent and permitting her family members to visit her at the institution. The operative portion of the said judgment reads as follows:

“7. When the case is taken up for consideration on today, counsel appearing on behalf of the alleged detainee had produced documents to show that the alleged detainee got admission in an institution namely 'Markazul Hidayah Sathiyasani Educational & Charitable Trust at Karuvambram, Manjeri in Malappuram District. The documents will reveal that she is admitted in the said institution on 20.1.2016. Learned counsel for the alleged detainee submitted that she is staying in the Hostel of the said institution. Learned Government Pleader submitted that, statement of the alleged detainee required for the purpose of investigation of the case has already been recorded.

8. Under the above mentioned circumstances, we are convinced that the alleged detainee is not under any illegal confinement. She is at present staying in the above said institution on her own wish and will. She is not under illegal confinement. Therefore, there exists no circumstances warranting interference for issuance of any writ of Habeas Corpus. Hence the original petition is

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hereby disposed of by recording the fact that the alleged detainee is staying in the above said institution on her own free will. It will be left open to the petitioner and her family members to make visit to her at the above institution, subject to regulations if any regarding visiting time.”

36. The present writ petition was filed on 16.8.2016 alleging that there was a likelihood of Ms.Akhila being transported to Syria at the instance of the 6<sup>th</sup> respondent. He has also alleged the involvement of radical Muslim organizations that are engaged in transporting in girls who are converted to Islam, out of India. In this writ petition, Ms.Akhila had appeared in Court in the company of the 7<sup>th</sup> respondent, after the Police authorities had informed this Court that she had decamped from the place where she had been residing last. It is also not clear how Ms.Akhila had landed back in the custody of the 7<sup>th</sup> respondent after this Court had permitted her to remain in the hostel of the 6<sup>th</sup> respondent. Since the petitioner has alleged in the writ petition that she was likely to be taken out of the country and since the Police investigation was remaining

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inconclusive, she was directed to be accommodated in a ladies hostel at Ernakulam until further inputs were available. However, as we have already narrated earlier, she was later on permitted to accompany the 7<sup>th</sup> respondent and to reside with her. Even at that time, this Court stipulated that in the event of any change in her residence, Ms.Akhila shall inform the fact to the Deputy Superintendent of Police, Perinthalmanna in writing and furnish the available residential address and the telephone number over which she could be contacted. It is clear from the above that Ms.Akhila was only permitted to reside with the 7<sup>th</sup> respondent. She however has understood the said order of this Court as having conferred on her a right to act as the guardian of Ms.Akhila. Both herself and her husband have arrogated to themselves the role of the guardianship of Ms.Akhila and it is alleged that they have given her in marriage to Mr.Shefin Jahan. This Court was kept totally in the dark regarding the said developments. In fact the sequence of events reveal a deliberate attempt to force the

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hands of this court and to face this court with a fait accompli. We shall examine the sequence of events again for the purpose of clarity of understanding.

37. When the case came up before us on 14.11.2016, after hearing the respective counsel, we noticed that Ms.Akhila was residing with the 7<sup>th</sup> respondent in her house. We were told at that time that the 7<sup>th</sup> respondent was a housewife, while her husband was a small time business man dealing in cashew nuts. Though a lot of allegations were levelled by the counsel for the petitioner against respondents 6 and 7, we noticed that Ms.Akhila was aged only 23 years, and that she had not completed her House Surgeoncy. Since the Senior Counsel Sri.S. Sreekumar had submitted that she had become a qualified medical practitioner in Homoeopathy and was earning income sufficient to maintain herself, we directed Ms.Akhila as well as the 7<sup>th</sup> respondent to disclose the sources of their income in separate affidavits and to produce proof of qualification of Ms.Akhila and the Ration Card of the 7<sup>th</sup> respondent.

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Accordingly, Ms. Akhila filed an additional counter affidavit dated 26.11.2016 wherein she has disclosed that she had completed her Homoeopathic Course from Shivaraj Homoeopathic College, Salem in 2016. However, it is admitted in her affidavit that she did not thereafter pursue her House Surgeoncy for which she had joined in October, 2015. Instead, according to her, she went to Tharbiyathul Islam Sabha and was permitted to register with them. Thereafter, according to her, she went to the College on 6.1.2016 wearing the head dress worn by Muslim females. Thereupon, her parents were informed of the said change in her attire and they tried to persuade her to return home to which she did not accede. She was residing with the 7<sup>th</sup> respondent thereafter, who, according to her, was taking care of her along with her children. She has disclosed in her affidavit that her next batch of House Surgeoncy would start on 28.6.2017 and that, if her father returned her Certificates, she could complete her studies by undergoing the House Surgeoncy. Only after completing her Course,

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could she attend a Clinic for practicing Homoeopathy so as to earn a livelihood. On the date of the filing of the said affidavit, she was having an income of only Rs.2000/- that was being paid to her as per Annexure R8(d) by the practitioner with whom she was working as a trainee. Ext.R7(k) is copy of the Ration Card of the 7<sup>th</sup> respondent. The monthly income of her family is shown therein as Rs.2,000/- only. Though she had stated in her affidavit that she has other sources of income, no documents in proof thereof have been produced. Even assuming the said statements of hers also to be true, her total income can only be described as modest. However, it is worth noticing that an expensive Senior Advocate is appearing for Ms.Akhila, who has only an income of Rs.2,000/- per month, while an Advocate of considerable standing is appearing for the 7<sup>th</sup> respondent.

38. It is clear from the facts and circumstances of the present case, that neither Ms.Akhila, who is the alleged detainee, nor the other respondents in this case who are

contesting the matter have any paucity of funds. It is further clear from the facts and circumstances of the case that respondents 6 and 7 as well as Ms.Akhila have had the support and active assistance of a number of persons at various stages, clearly pointing to an organizational backing. Ms. Akhila is from Vaikom in Kottayam District, whereas the 7<sup>th</sup> respondent is from Kottakkal. Ms.Akhila was studying at Salem in Tamil Nadu. In spite of these places being at considerable distance, Ms.Akhila has had no trouble in travelling freely between the places both when she was a student and also after she had abandoned her studies. She is stated to have come to Ernakulam and met Smt.Sherin Shahana and her husband more than once. The question as to how she had found money for the said purposes, remains unanswered. She has had the support and help of a number of persons, throughout. The 7<sup>th</sup> respondent and their family with their modest income could not have borne the said expenses on their own. One common factor that links all the players in the transactions



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in this case is that, they are either members of the SDPI, the National Front or one or the other of its sister organizations. Even Sri.Shefin Jahan, who is alleged to have married Ms.Akhila, is an activist of SDPI. At any rate, there are sufficient materials available to justify a conclusion that there are forces acting from behind the curtains controlling Ms.Akhila and extending all necessary support to her. However, the Investigating Officer has not conducted any enquiry into the above aspect of the matter, nor has he made any attempt to probe the activities of the said organizations and antecedents. Since it is clear that, there are other players behind the scenes controlling Ms.Akhila, her case that everything has been at her instance, cannot be accepted. She has deliberately concealed her association with Sri.Shanib, Smt.Sherin Shahana and Sri.Fasal Musthafa from this Court. She has also been trying to play down the role of her friends Ms.Jaseena and Ms.Faseena and their father Sri. Aboobacker.

39. Our interaction with the detenue when she was brought before us, gives us an impression that, she is only an ordinary girl of moderate intellectual capacity. She appeared to be repeating verses and quotations in Arabic that she has apparently memorized. According to the Police, and the Senior Government Pleader, she has been made to believe that she would go to hell if she did not accept Islam and is under such a belief. She also appears to be a gullible person. A hostility to her parents also has been instilled into her. It could also be that, she is under some sort of compulsion that is binding her to the 7<sup>th</sup> respondent and others who are controlling her. She has not impressed us as a person who is capable of taking a firm and independent decision on her own. Her conduct so far also supports our above view. She had completed her BHMS and was on the verge of getting professionally qualified upon completing her House Surgeoncy Course. According to her, she had also joined for a House Surgeoncy Course. However, she abandoned her professional studies to embark

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upon religious studies, which cannot be accepted as the normal human conduct of a girl aged 20 years. Thereafter, she stated before Court that she wanted to complete her House Surgeoncy. When this Court wanted to permit her to undertake her House Surgeoncy Course, we are informed that she had got married. Her conduct cannot be accepted as that of a person who is possessed of her faculties. She has no idea as to what she wants in life. She appears to be under the control of someone else. It is evident that she has been indoctrinated and influenced by persons whose identities have not been ascertained. An attempt is made in these proceedings to give an impression that all the other players involved have acted only on the request of Ms. Akhila. Such a story is unbelievable. The Police authorities could have unearthed materials, had they probed the call details of Ms.Akhila. No such attempt has been made in the present case.

40. In this context, it is necessary to mention that there was another case with which this Court had to

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deal. The same is W.P.(CrI.) No. 235 of 2016. In the said writ petition filed by another hapless father, the complaint was regarding the forcible conversion of one Ms.Athira, his daughter to the Islamic faith. She was a Hindu girl, who, as in the present case, contended that she had embraced Islam of her own free volition. However, the investigation by the Circle Inspector of Police, Cheruplassery, Palakkad District, who had registered Crime No. 50 of 2016 and investigated the same, found that she had been influenced through continuous telephonic conversations. In the said case, the role of the 7<sup>th</sup> respondent was played by one Smt. Sheena Farzana, and her husband Sri.Mujeeb Rahman, Pattikkad, Malappuram District, a painter. All the players involved in the said case were SDPI/PFI activists. The 7<sup>th</sup> respondent in the present case is also said to have had connection with the conversion in the said case. It is stated that the 7<sup>th</sup> respondent herein had advised Ms.Athira to get married to a Muslim so as to avoid interference from court proceedings. In the said case, the perpetrators were arrested and the

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proceedings are going on. The said writ petition has not been finally disposed of for the reason that, the main accused in the said case, one Sri.Noufal Kurikkal is still at large, remaining outside the country. The modus operandi adopted in both these cases are similar. The girls in both these cases belonged to middle class Hindu families. It was found on analysing the call details of the girl in the said case that, she had been contacted over her mobile phone for more than 600 hours during a short span of time, mostly at odd hours of the night, prior to her disappearance from home. In the said case also, the girl had initially refused to accompany her parents, but she later on realized her folly and has been reunited with her parents. The similarities between the two cases is clear and unmistakable. In the said case also, the girl had appeared in court on her own seeking to get impleaded as a party, as in this case. It is interesting to note that, the counsel for the 7<sup>th</sup> respondent in this case Sri.P.K.Ibrahim was representing her in the said case. This court can only express regret that the

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Investigating Officer in the present case has not sought the co-operation of the Investigating Officer in the said case in spite of the striking similarities. In view of the circumstances noticed above, it is absolutely necessary that a proper investigation that is comprehensive in all respects is conducted into these episodes to get at the truth. Such an investigation would have to be supervised and controlled by the 4<sup>th</sup> respondent himself. Any other officer of a lower rank, would not have the freedom to conduct such a full-fledged investigation, due to jurisdictional and other constraints.

41. In the present case, we are now faced with the plea that Ms.Akhila has contracted a marriage. This is not a case of a girl falling in love with a boy of a different religion and wanting to get married to him. Such situations are common and we are familiar with them. In all such cases, this Court has been consistent in accepting the choice of the girl. However, the case here is different. It is an admitted case that this is an arranged marriage.

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Ms.Akhila had no previous acquaintance with Sri.Shafin Jahan. According to her, she had registered her name at a matrimonial site by name 'way to Nikhah'. The marriage proposal had originated from Sri.Shafin Jahan in response to her profile that was available at the site. The case of the 7<sup>th</sup> respondent is that, she had, on the request of Ms.Akhila, acted as her guardian and her husband had given her in marriage in accordance with Islamic religious rites.

42. It is necessary at this point to notice the context in which the marriage has taken place. On 14.11.2016, we had expressed our dissatisfaction at the continued residence of Ms.Akhila in the house of 7<sup>th</sup> respondent, a stranger. Therefore, we wanted the detainee to produce proof of her qualifications and the 7<sup>th</sup> respondent to disclose her sources of income. Accordingly, Ms.Akhila has sworn to an additional counter affidavit on 26.11.2016 wherein she has stated that if her father returned her certificates, she could complete her House Surgeoncy Course. In her counter affidavit dated

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24.10.2016 she has stated in very clear terms that her only desire was to complete her course and to serve the humanity in her own mother land. The 7<sup>th</sup> respondent has also sworn to an affidavit on 25.11.2016 disclosing her sources of income. Nobody had a case at that time that Ms.Akhila wanted to get married. It was relying on the said affidavit as well as the submission made by Sri.S.Sreekumar, the Senior Counsel, who was appearing for Ms.Akhila, that we passed the order dated 19.12.2016 directing Ms.Akhila to appear before us on 21.12.2016 for the purpose of directing her to proceed to her College along with the petitioner herein to complete her House Surgeoncy Course. The marriage of Ms.Akhila is also alleged to have been conducted on the very same day, 19.12.2016. It is clear that the alleged marriage is only a make-believe, intended to take the detinue out of reach of the hands of this Court.

43. This writ petition is dated 16.8.2016. In the writ petition, the petitioner has alleged that efforts were on to conduct a fake marriage of Ms.Akhila without her consent



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and free will to a Muslim associated with an extremist organization in order to hood-wink the Police and others and to transport her out of the country. If the statements of the detainee and the 7<sup>th</sup> respondent are to be believed, she had registered her name at the matrimonial site during April, 2016. The above fact substantiates the apprehension expressed by the petitioner in this case. The same now stands established by the marriage that is said to have been conducted. The marriage has been conducted, during the pendency of these proceedings, without even informing this court. The 7<sup>th</sup> respondent and her husband have therefore conducted themselves in a manner that is unacceptable on any count. Since this Court had reposed trust in her and had permitted Ms.Akhila to reside in her house, she had the duty at least to inform this court of the proposal that was admittedly being considered during the pendency of these proceedings. She along with her husband assumed the role of the guardian of Ms.Akhila with scant regard for the rights of the petitioner and his wife, who are the parents and

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natural guardians of Ms.Akhila. They are alive. The petitioner is before this Court complaining that he apprehended the conduct of such a marriage. The conduct of the 7<sup>th</sup> respondent and her husband are therefore taken serious note of by this Court as an interference with the dispensation of justice by this Court. They have betrayed the trust reposed in them by this Court.

44. The 7<sup>th</sup> respondent and her husband had no authority to give Ms.Akhila in marriage to any one. Therefore, all their acts purporting to have done so are invalid and of no consequence. Though it is repeatedly stated that Ms.Akhila has got converted to the Islam religion, there is no document evidencing such conversion on record. The name which she is alleged to have chosen, according to an affidavit executed by her before Adv.Devy A.C., Advocate and Notary on 10.9.2015 is 'Aasiya'. When she filed W.P.(C) No. 1965 of 2016, she described herself as Akhila Ashokan @ Adhiya. She has sworn to the pleadings in the said case and the affidavit in support of that writ

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petition in the said name. In W.P.(Crl.) No. 25 of 2016 she has sworn to affidavits describing herself as Akhila Ashokan @ Adhiya. In this writ petition, in her affidavits, she describes herself as 'Akhila Ashokan @ Adhiya'. In Ext.R8(f), Ms. Akhila is described as 'Hadiya' and Sri.Ali. S, the husband of the 7<sup>th</sup> respondent, is shown as her guardian. The said marriage request is alleged to have been registered on 17.4.2016. According to the 7<sup>th</sup> respondent, Ms.Akhila met Sri.Shafin Jahan only on 30.11.2016. In the alleged marriage certificate issued by Thanveerul Islam Sangham dated 20.12.2016 produced by the Senior Government Pleader along with a memo dated 19.12.2016, her name is shown as Hadiya, D/o. Akhil Asokan. It is clear from the above that, even regarding the identity of Ms.Akhila, there is no certainty.

45. When it was submitted in Court that Ms.Akhila had got married, we wanted the Investigating Officer to probe the antecedents of Sri.Shafin Jahan. He has also filed an affidavit which is produced and marked as

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Ext.R8(j). Sri.Shafin Jahan has admitted the fact that he was an active member of a party, Social Democratic Party of India, SDPI. He is also one of the administrators of whatsapp group 'SDPI Kerlam' which is a whatsapp group formed for the functioning of the political party. He is an accused in Crime No.2100 of 2013 registered alleging offences under Sections 143, 147, 341, 323, 294(b) read with Section 149 of I.P.C. which is pending before the Judicial First Class Magistrate. Security proceedings had been initiated against him, but was later on dropped. The materials posted by him in his face book have been produced as Exts.R8(k) to R8 (t). The posts unmistakably show his radical inclination. The learned Senior Government Pleader has placed before us the instructions received by him from the Investigating Officer dated 22.2.2017 wherein it is stated that, the details of the marriage had not been disclosed by him in his face book though he was very active on the internet. As per the report of the Investigating Officer dated 4.1.2017, Sri.Shafin Jahan was active in the SDPI even from his college days

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where he was active in the Campus Front. 'SDPI Keralam' the watsup group of the party has a core committee which is called 'Thanal'. Mansy Buraqui who was arrested by the National Investigating Agency at Kanakamala on 2.10.2016 on the allegation that he had connection with the extremist organization, Islamic State (IS), was also a member of the SDPI Keralam and Thanal. Though it is stated that he had later been removed, the fact remains that Sri.Shafin Jahan has association with him. He is also accused in a criminal case. No prudent parent would decide to get his daughter married to a person accused in a criminal case. This is for the reason that, the possibility of such a person getting convicted and being sent to jail cannot be ruled out. It is clear that Sri.Shafin Jahan is only a stooge who has been assigned to play the role of going through a marriage ceremony. The alleged marriage is only a sham and is of no consequence. The same was intended only to force the hands of this court and to scuttle the proceedings in this case that were progressing. The same was intended only to

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take Ms.Akhila out of reach of this Court and her parents.

46. We further take note of the fact that, Sri.Shafin Jahan's mother is already in the Gulf. He was working in the Gulf and is desirous of going back. Therefore, left to him, he would have transported Ms.Akhila out of the country. In the present confusion regarding her name, it would have become impossible to even trace her out had she been taken out of India. There are reports of girls taken out of the country after such conversions, having become untraceable.

47. Adv. P.K.Ibrahim has placed reliance on the decisions reported in *Girish v. Radhamony K.* ((2009) 16 SCC 360), *Gian Devi v. The Superintendent, Nari Niketan, Delhi* ( (1976) 3 SCC 234), *Lata Singh v. State of U.P.* ((2006) 5 SCC 475), *S. Khushboo v. Kanniammal* ((2010) 5 SCC 600) and ((2011) 6 SCC 396) to contend that, it is the absolute right of a person who has attained majority to choose a religion of his/her own choice and that, the parents have no right or authority to question her choice. However, we

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notice that, all the cases relied upon were concerned with girls who had fallen in love with persons belonging to other religions and who wanted to get converted and to live their marital life with the said persons. As we have already noticed above, such a situation does not exist in the present case. Here, the detainee went away from her parents stating that she wanted to become a Muslim alleging that she was attracted to the teachings of the said religion. The said story cannot be believed for the reasons already stated above. In the present state of affairs, it is absolutely unsafe to let Ms.Akhila free to do as she likes.

48. The resultant situation therefore is that, Ms.Akhila, though has completed her Homeopathic Medical Course, has not acquired her professional qualification since she has not completed her House Surgeoncy. She left her parents and her home allegedly for the purpose of embracing Islam as her faith. However, there is no evidence available of her conversion, in accordance with law. There is confusion regarding her identity. She has even sworn to

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affidavits before this Court, initially claiming that she was Adhiya and later on as Hadiya. She has also sworn to an affidavit before a Notary stating that her name was Aasiya. It is clear that she does not have a consistent stand even regarding her name. Though she initially stated that she wanted to learn more about Islam, all that she has done, even according to her, is to undergo a two month's course with the 6<sup>th</sup> respondent. She has thereafter returned to the 7<sup>th</sup> respondent though she was permitted by this Court to reside in the Hostel of the 6<sup>th</sup> respondent for the purpose of attending her course. She appeared before this Court in the present case, in the company of the 7<sup>th</sup> respondent. There is no explanation as to why she had returned to the 7<sup>th</sup> respondent, without going home. She has sworn to an affidavit in these proceedings, claiming that she wanted to pursue her studies and to complete her House Surgeoncy. When she is asked to appear in Court for the purpose of being sent to her College, she appears and takes a stand that she had got married. It is clear that she has no



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consistent stand or a clear idea about her life or future. It is also clear that she is in a situation where she is acting on the dictates of some others who are bent upon taking her away from her parents. Their objectives in doing so are not clear. According to the petitioner, his daughter is likely to be transported out of India by people having links with extremist organizations. The apprehension expressed by him in his writ petition that his daughter was likely to be got married to a Muslim, stands substantiated by the events that have unfolded. Her marriage is alleged to have been performed by the 7<sup>th</sup> respondent and her husband acting as her guardians. They have no right to do so. The person who is alleged to have married her is an accused in a criminal case. He is also a person who has radical inclinations as evident from his Facebook posts. Ms. Akhila has had no contact with him in the past and the marriage has been brought about through a matrimonial site. Her name was registered at the site by the 7<sup>th</sup> respondent. The learned Senior Government Pleader has alleged that in

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another case, W.P.(Crl) No. 235 of 2016, which is pending, there are inputs suggestive of the fact that the 7<sup>th</sup> respondent had advised the detainee therein to get married to a Muslim to overreach court proceedings. Neither the alleged detainee nor the 7<sup>th</sup> respondent appear to be having any constraints on funds. All the above facts point to the existence of an organizational set up functioning behind the scenes. In the above factual background, we are not satisfied that it is safe to let Ms.Akhila free to decide what she wants in her life. She requires the care, protection and guidance of her parents.

49. Ms.Akhila is the only child of her parents. There are no other persons in this world, who would consider the welfare and wellbeing of their daughter to be of paramount importance than her parents. The nature provides numerous examples of even animals taking care of and protecting their progeny sacrificing their very lives for the purpose. The Homo sapien is no exception. The forces operating from behind the curtains have succeeded in

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creating a hostility in the mind of Ms.Akhila towards her parents. During our interactions, we have seen the anguish and sorrow of the father, who was pleading with his daughter to return home. The petitioner has in his reply affidavit dated 24.10.2016 (paragraph 7) stated that he has no objection in Ms.Akhila carrying on worship and following religious practices in accordance with her Islamic beliefs. He has also stated that he would afford necessary facilities for her to perform all the rituals of Islam in her house. Therefore, Ms.Akhila can have no complaint against her parents. She would be safe only with her parents taking into account the fact that she is a girl aged 24 years.

50. A girl aged 24 years is weak and vulnerable, capable of being exploited in many ways. This Court exercising parens patriae jurisdiction is concerned with the welfare of a girl of her age. The duty cast on this Court to ensure the safety of at least the girls who are brought before it can be discharged only by ensuring that Ms.Akhila is in safe hands. The 7<sup>th</sup> respondent has proved that she is

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unworthy of the trust reposed in her, by her conduct in weaning Ms.Akhila away from her parents and by having a sham of a marriage ceremony performed with a person like Sri.Shafin Jahan who is an accused in a criminal case, apart from being associated with persons having extremist links. Another Division Bench of this Court has in Lal Parameswar v. Ullas (supra) recognized parental authority over even a female who has attained majority. We are in respectful agreement with the said dictum. A Single Bench of this Court has in Shahan Sha A v. State of Kerala (supra) taken note of the functioning of radical organizations pursuing activities of converting young girls of Hindu religion to Islam on the pretext of love. The fact remains that such activities are going on around us in our society. Therefore, it is only appropriate that the petitioner and his wife, who are the parents, are given custody of Ms.Akhila. She shall be cared for, permitted to complete her House Surgeoncy Course and made professionally qualified so that she would be in a position to stand independently on her own two legs. Her

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marriage being the most important decision in her life, can also be taken only with the active involvement of her parents. The marriage which is alleged to have been performed is a sham and is of no consequence in the eye of law. The 7<sup>th</sup> respondent and her husband had no authority or competence to act as the guardian of Ms.Akhila and to give her in marriage. Therefore, the alleged marriage is null and void. It is declared to be so.

In the result,

i) This writ petition is allowed. The petitioner is granted custody of his daughter Ms.Akhila, who is presently residing at SNV Sadanam Hostel, Ernakulam pursuant to our direction. The 2<sup>nd</sup> respondent or a Police Officer in the rank of Sub Inspector as authorised by him, in the presence of a Woman Police Constable/Constables shall escort Ms.Akhila from the Hostel to the house of the petitioner. The 2<sup>nd</sup> respondent shall also provide protection to the petitioner and his wife and Ms.Akhila and shall maintain a surveillance over them to ensure their continued safety.

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ii) The marriage of Ms.Akhila alleged to have been conducted on 19.12.2016 by the Khazi of Puthoor Juma Masjid at Srmbikcal House, Puthoor (house of the 7<sup>th</sup> respondent) is declared to be null and void.

iii) The 4<sup>th</sup> respondent shall take over the investigation of Crime No. 21 of 2016 of Perinthalmanna Police Station and shall have a comprehensive investigation conducted co-ordinating the investigation in Crime No.510 of 2016 of Cherpulassery Police Station which has been registered into the forcible conversion of Ms.Athira which is the subject matter of W.P.(CrI.) No. 235 of 2016 of this Court. The 4<sup>th</sup> respondent shall also investigate the activities of the organizations that are involved in this case of which reference has been made by us above. Such investigation shall be completed as expeditiously as possible and the persons who are found to be guilty shall be brought to the book.

iv) The 4<sup>th</sup> respondent shall conduct a full-fledged enquiry into the lapses on the part of the

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Investigating Officer in this case and shall, if necessary, pursue departmental proceedings against the Officer concerned.

The Registry shall transmit a copy of this judgment to the 4<sup>th</sup> respondent for necessary action.

Sd/-  
K. SURENDRA MOHAN  
JUDGE

Sd/-  
K. ABRAHAM MATHEW  
JUDGE

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