



H.C.P(MD)No.1120 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.1120 of 2023

Vijaya

... Petitioner

vs.

1. The Superintendent of Police,
Madurai District,
Madurai.

2. The Inspector of Police,
Saptur Police Station,
Madurai District.

3. Rajesh Kannan

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, directing the respondents to produce the detenues, petitioner's daughter namely Pavithra, W/o. Suresh, aged 28 years, grandchildren namely Nagalakshmi, D/o.Suresh, Aged 8 years, Sundar, S/o.Suresh, Aged 7 years before this Court and set them at liberty.

For Petitioner : Mr.UM.Berdin Vinodh
For R1 & R2 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed in this Court on 29.08.2023.

2. Factual matrix in a nutshell is that the petitioner's daughter 'Pavithra' [hereinafter 'absentee' for the sake of convenience] is married to one Suresh, son of Sundaramahalingam; that the marriage between absentee and Suresh was solemnised in the year 2013; that there are two children from the wedlock between absentee and Suresh i.e., 'xxx' a girl child aged 9 years and 'yyy' a male child aged 7½ years [we are masking the names of the children for obvious reasons]; that absentee is missing from 11.06.2023 is petitioner's case; that Suresh lodged a complaint in the Saptur Police Station in Madurai District and the complaint was registered vide Crime No.76/2023 [women missing, boy missing and girl missing]; that captioned HCP has been filed by the petitioner qua absentee; that before the Hon'ble Predecessor Bench, learned Additional State Public Prosecutor accepted notice for official respondents 1 and 2 and thereafter there were two listings on 25.09.2023, 01.11.2023 and proceedings made in these listings shall be read as integral part and parcel of this final order and a scanned reproduction of the same are as follows:



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MSRS & MNKT

The learned Additional Public Prosecutor has filed a status report and he seeks further time to produce the detainees before this court.

Post the matter on 01.11.2023.

B/o
LM
25/09/2023

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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

**(Order of the Court was made by
M.SUNDAR, J.,)**

There is no representation for the petitioner. However, Mr.R.Meenakshi Sundaram, learned State Additional Public Prosecutor adverting to earlier proceedings [instructed by Mr.L.Mathanakala, Inspector of Police, Saptur Police Station] requests for further time. Request acceded to.

**2.List after six [6] weeks. List on
18.12.2023.**

B/o
01.11.2023
MR



3. Today, the matter was taken up by way of additional list at the instance of mentioning by learned Prosecutor saying that the absentee along with 'xxx' and 'yyy' have been located.

4. When the matter was taken up, Mr.UM.Berdin Vinodh, learned counsel for petitioner, Mr.R.Meenakshi Sundaram, learned State Additional Public Prosecutor for respondents 1 and 2 instructed by Ms.L.Mathanakala, Inspector of Police, Saptur Police Station, 3rd respondent, absentee along with 'xxx' and 'yyy' were present before us.

5. This Bench had interaction with absentee and thereafter with the 3rd respondent. The following position emerges from the interaction:

(a) The absentee is clearly a major as her date of birth is 14.05.1996 [27 years] and 3rd respondent is also a major as his date of birth is 26.10.2002 [21 years];

(b) The absentee is friendly with the 3rd respondent and has gone with the 3rd respondent voluntarily on her own volition;

(c) The absentee expresses marital discord



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with her spouse but we express no opinion or view on this aspect of the matter;

(d) The two children 'xxx' and 'yyy' are going to school i.e., Government Primary School, Paramakudi and they are pursuing their school education;

(e) The absentee and 3rd respondent say in one voice that the children will continue their education and they would give adequate care to 'xxx' and 'yyy';

(f) We have not expressed any view or opinion on the aforesaid points as we would be preserving the rights of the parties to go to Family Court and / or GAWA Court (to be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890') if so advised and if so desired;

(g) The absentee and the 3rd respondent are now residing in a rented house at ஜந்தி முனை ரோடு, Parakamudi along with 'xxx' and 'yyy'.



6. From the narrative thus far, where we have captured what unfurled in the hearing today, it is clear that it is not a case of unlawful custody or illegal detention. The children are with the biological mother. This Court makes it clear that it is now for the HCP petitioner, absentee's spouse and absentee to work out their rights in the Family Court or GAWA Court and or any other appropriate Court / Courts / Forum / Fora / Authority / Authorities. If any Family Court, GAWA Court or any other Court / Courts / Forum / Fora / Authority / Authorities are approached, they shall deal with the matter on its own merits and in accordance with law untrameled by the instant orders and closure of captioned HCP which is being made for the limited purpose of dropping the curtains on the habeas legal drill on hand as this is not a case of unlawful custody or illegal detention. This Bench also makes it clear that all the rights and contentions of petitioner, absentee, absentee's spouse and 3rd respondent are preserved for the purpose of further proceedings (if any) in any Court / Courts / Forum / Fora / Authority / Authorities.

7. As regards the parties, this Court expects them not to indulge in any high-handed action and the parties shall approach appropriate Court / Courts / Forum / Fora / Authority / Authorities if so advised and if so desired.



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8. Curtains are down on the captioned HCP. Captioned HCP is disposed of in the aforesaid manner with aforesaid observations capturing what unfurled in the hearing today and preservation of rights in the aforesaid manner. There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
02.11.2023

Index : Yes / No
Neutral Citation : Yes / No
bala

To

1. The Superintendent of Police,
Madurai District,
Madurai.

2. The Inspector of Police,
Saptur Police Station,
Madurai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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