

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

Coram:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.1645 of 2015

Prakash .. Petitioner/father of the
detenue

Vs.

1. State rep. by
The Inspector of Police,
Kumarapalayam Police Station,
Namakkal District.
Cr.No.200 of 2015

2. Dinesh

3. Siddheswaran .. Respondents

Habeas Corpus Petition has been filed under Article 226 of the Constitution of India for a Writ of Habeas Corpus, directing the 1st respondent to secure the body of the petitioner's minor daughter, by name, Brindha, aged about 17 years, before this Court, who is alleged to be under the illegal custody of the respondents 2 and 3.

For petitioner : Mr.A.Gokulakrishnan

For respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor (Crl.Side)
for R.1

For R2 : Mr.Dinesh

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O R D E R

(Order of the Court was made by S.NAGAMUTHU, J)

The petitioner is the father of one Brindha, aged 17 years. Her date of birth is 11.12.1998. According to the petitioner, Brindha (hereinafter referred to as the "detenue") was found missing from 20.05.2015 onwards. In this regard, a complaint was made to the 1st respondent on 21.05.2015, upon

which, a case was registered in Crime No.200 of 2015 for the offence under Section 366(A) IPC. Since, the detainee was not rescued by the 1st respondent police, the petitioner has filed the present Habeas Corpus Petition on 07.07.2015.

2. In the affidavit filed in support of the petition, the petitioner has alleged that the detainee had been kidnapped by the 2nd respondent (Dinesh) with the help of the 3rd respondent (Siddheswaran). Though, this petition came up for hearing on several occasions, on the instruction of the 1st respondent/Inspector of Police, the learned Additional Public Prosecutor was going on taking time assuring this Court that the detainee will be secured by taking appropriate steps. On 14.12.2015, the 3rd respondent appeared before this Court and submitted to the Court that he had nothing to do with the kidnapping of the detainee by the 2nd respondent and he had no knowledge about the same at all. This was recorded by the Court. Even thereafter, the detainee was not produced by the 1st respondent police before this Court.

3. Today (09.02.2016), when the matter was taken up, the 2nd respondent has made appearance along with the detainee viz., Brindha. When we enquired, she admitted that her date of birth is only 11.12.1998; she has not completed 18 years of age so far. She further submitted that because her parents brought pressure upon her, she went along with the 2nd respondent, married him at Kooduthurai in Bhavani, Erode District and from that time, she has been living with the 2nd respondent as his wife. She has further submitted that now she is seven months pregnant. The 2nd respondent and detainee further submitted to this Court that they have come to this Court on their own on knowing about the hearing of the case. The father of the detainee viz., the petitioner is also present before this Court. The minor girl, viz., the detainee submitted to this Court that she is not willing to go with her parents. She further submitted that she wants to go only with the 2nd respondent. The petitioner submitted that he is not willing to take the minor girl into his custody.

4. In these circumstances, we are impelled to decide about the safety of the minor girl Brindha. Admittedly, she has not completed 18 years of age and she is still a child as defined in the provisions of the Protection of Children from Sexual Offences Act, 2012. The very fact that she has married the 2nd respondent and now she is pregnant would go to show that the act of the 2nd respondent is governed by the provisions of the Protection of Children from Sexual Offences Act, 2012. When that be so, it is not possible for this Court to allow the minor girl (child) to go along with the 2nd respondent. Since, the parents are also not willing to take back the detainee into their family-fold and since, the detainee (child) herself is not willing to go

with her parents, we are not in a position to go into the question of handing over her into the custody of parents.

5. As per the provisions of the Protection of Children from Sexual Offences Act, 2012 and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, the detenu being a child is in need of care and protection. As provided under Section 62-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, read with Rule 4 of the Protection of Children from Sexual Offences Act, 2012, we are inclined to direct Mr.C.Veludevan, Inspector of Police, who is present before this Court, to produce the child Brindha before the District Child Protection Unit of Namakkal District (or) the Child Welfare Committee of Namakkal District, who shall decide about the care and protection to be given to the child as mandated under these two enactments.

6. Having regard to the fact that the child herself is carrying a child in her womb and since, she requires immediate medical care and attention, the District Child Protection Unit of Namakkal District (or) the Child Welfare Committee of Namakkal District, shall ensure not only the safety of the child, but also shall provide adequate medical care and attention to her. The District Collector, Namakkal District, shall also ensure that every assistance for her protection, care and medical attention should be provided.

7. In the result, this Habeas Corpus Petition is disposed of with the following directions:-

- (1) The child Brindha shall be taken by Mr.C.Veludevan, Inspector of Police, who is present before this Court and produce her before the District Child Protection Unit of Namakkal District or the Child Welfare Committee of Namakkal District, forthwith.
- (2) The said authority shall pass necessary orders for the care and protection of the child Brindha and to keep her in a protection home, and shall also ensure adequate, medical care and attention to her, until she attains majority.
- (3) The District Collector, Namakkal District, shall also ensure the implementation of this order scrupulously.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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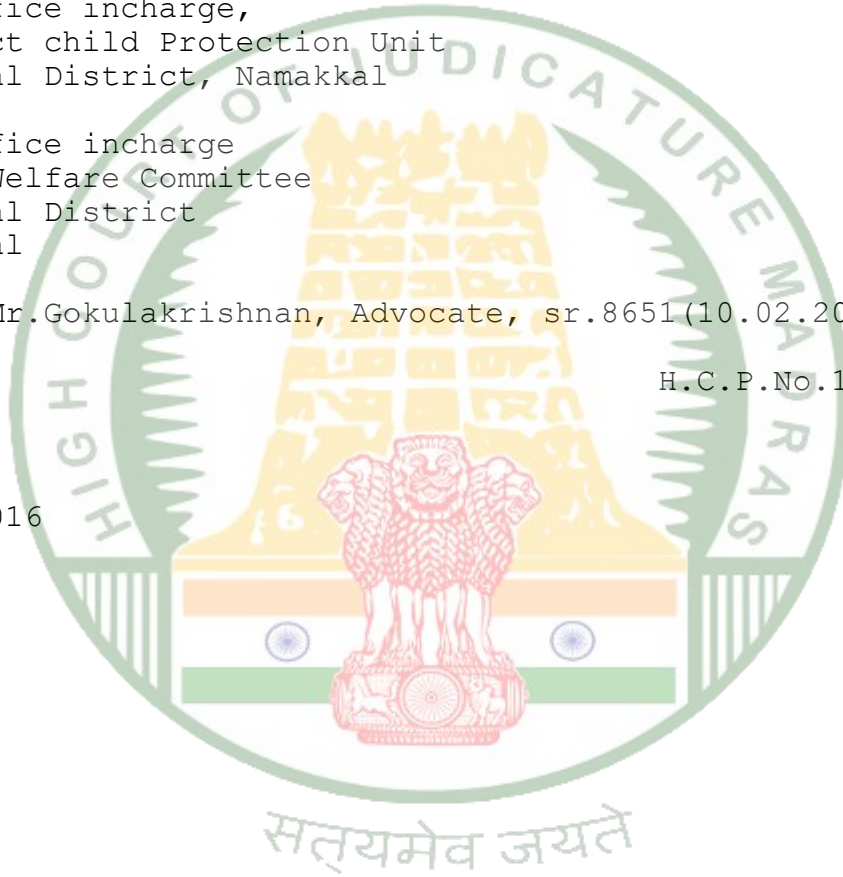
To

1. The Inspector of Police,
Kumarapalayam Police Station,
Namakkal District.
2. The District Collector,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.
4. The Office incharge,
District child Protection Unit
Namakkal District, Namakkal
5. The Office incharge
Child Welfare Committee
Namakkal District
Namakkal

+1 cc to Mr.Gokulakrishnan, Advocate, sr.8651(10.02.2016)

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