

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE SELVI JUSTICE R.MALA

H.C.P.No.3113 of 2015

Sameena Kurshith

... Petitioner

versus

1. The Superintendent of Police,
Collector Office Road,
Sungu Pettai, Perambalur 621 212.
2. The Inspector of Police,
Perambalur Police Station,
Super Nagar, Attur Road,
Perambalur 621 212.
3. Child Welfare Committee,
Government Special Home,
Opp., to Taluk Office,
Chengalpet 603 002.
Kancheepuram District.
4. The District Social Welfare Officer,
No.43, 2nd Street,
Gandhi Nagar, Near IOB,
Kancheepuram 631 502.
5. Roshni Society,
Rep., by the President,
Ms.Bader Sayeed,
Guduvancherry,
Kancheepuram District.
6. Anwarul Muslimeen Jamia Jannathu Niswan,
Vadakku Mathavi Road,
Perambalur.
7. The Inspector of Police,
J8 Neelankarai Police Station,
Chennai.

... Respondents

(7th respondent is impleaded suo-motu
as per the order of this Court, dated
09.12.2015, made in H.C.P.No.3113 of 2015)

Petition filed under Article 226 of the Constitution for the issuance of a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the body of the detainee, Annies Fathima, aged about 12 years, presently in the illegal custody of the 6th respondent before this Court and set her at liberty.

For petitioner : Mr.Shaikh Mehrunisa

For respondents 1 to 3 : Mr.A.N.Thami Durai
Additional Public Prosecutor

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Contending inter alia that after the orders of this Court in H.C.P.No.339 of 2015, dated 20.03.2015, the 6th respondent, Anwarul Muslimeen Jamia Jannathu Niswan, Vadakku Mathavi Road, Perambalur, is not allowing minor girl, M.Annies Fathima, aged about 12 years, to continue her education, on the grounds that there are no girls English Medium Schools in that area, and on the date of filing the present Habeas Corpus Petition, minor M.Annies Fathima, has not been sent to School, for more than a year, which would not only affect her education, but also her mental status, leading to depression, Aunt Sameena Kurshith and sister of M.Haseena, petitioner in H.C.P.No.339 of 2015, has sought for a Writ of Habeas Corpus, directing the Superintendent of Police, Perambalur and Inspector of Police, Perambalur Police Station, respondents 1 and 2 herein, to produce the body of the detainee, minor Anies Fathima, aged 12 years, allegedly kept in the custody of the 6th respondent, before this Court, and set her at liberty.

2. Supporting affidavit to the Habeas Corpus Petition, has been sworn on 30th November, 2015. Record of proceedings that on the directions of this Hon'ble Division Bench, dated 15.12.2015, the present H.C.P.No.3113 of 2015, has been placed before us, by My Lord The Hon'ble Chief Justice, High Court, Madras.

3. According to the learned counsel appearing for the petitioner/Aunt Sameena Kurshith, the alleged detainee, minor Anies Fathima, aged about 12 years. When H.C.P.No.339 of 2015, came up before other Hon'ble Division Bench, it was represented by the learned Public Prosecutor, that steps are taken for continuation of education.

4. As regards the averments of the petitioner herein that the 6th respondent, Anwarul Muslimeen Jamia Jannathu Niswan, Vadakku Mathavi Road, Perambalur, had already sent a letter to the High Court, citing reasons, for not permitting the alleged detainee, to continue her education in English

Medium, we have directed the Registry to place the files, relating to such request.

5. Files produced before this Court shows that the Child Welfare Committee, Chengalpattu, Kancheepuram District,, has addressed a letter, dated 26.08.2015, to the Juvenile Justice Committee, High Court, Madras, stating that the they had approached the Department of Social Defence, for making alternative arrangement for the stay and education of the minor girl, Anies Fathima. The Child Welfare Committee has also said that as there was no children home to accommodate the alleged detainee and since she desired to study and stay in Muslim Seminary in Chengalpattu District, appropriate orders be issued to accommodate the child, at Madharsha, Chennai.

6. The request of the Chief Welfare Committee has been considered by the Juvenile Justice Committee of this Court, in the meeting held on 30th September, 2015 and based on the resolution passed by the Juvenile Justice Committee of this Court, the Registrar (Judicial) of this Court, has addressed a letter, dated 05.11.2015, to the District Collector, to look into the matter and take suitable action, for providing shelter and continuation of education. The Registrar (Judicial), has also enclosed a copy of the order made in H.C.P.No.339 of 2015 and the report of the Chief Welfare Committee, Chengalpattu, Kancheepuram District.

7. Responding to the above letter, dated 05.11.2015, of the High Court, Madras, the District Collector, Perambalur, in his letter in Lr.No.54/2015/DCPU-Perambalur, dated 16.12.2015, has stated that re-rehabilitation measures have been taken and the alleged detainee, Anies Fathima, D/o.Munavar Hussain, is now admitted in 8th Standard in English Medium in Dhanalakshmi Srinivasan Matriculation School and Hostel in Perambalur on 14.12.2015. It is further stated that the Chief Welfare Committee, Perambalur has approved the same.

8. As per the letter of the District Collector, Perambalur, dated 16.12.2015, tuition and hostel fees have not been paid. As per the Court orders, Mrs.M.Haseena, mother of the alleged detainee, Anies Fathima, was asked to pay the fees. Sister of the alleged detainee, Faiz Fathima, is already studying in Dhanalakshmi Srinivasan Polytechnic, Perambalur, from 2014 and the alleged detainee has expressed her willingness to meet her sister, every week and want to spend the holidays with her maternal aunt, the petitioner herein, and she does not want to meet her mother, Mrs.Haseena. It is further stated that the elder sister of the alleged detainee, has also expressed the same. The District Collector has stated that appropriate follow up action for rehabilitation of the child, Anies Fathima, would be taken care by the District Child Protection Unit (ICPS), Perambalur.

9. Earlier, in H.C.P.No.339 of 2015, dated 20.03.2015, we directed the petitioner therein, to pay the term fee, special fee, tuition fee and hostel fee for both the children, for continuation of their education. We also made it clear that in the event of the petitioner therein, not extending financial support, Ms.Bader Sayeed, President of Roshni Society, Guduvancherry, Kancheepuram District, was requested to extend the financial support to children's basic amenities, education and such other incidental expenses, to be incurred by the children. Registry was also directed to send a copy of the order to Ms.Bader Sayeed, President of Roshni Society, Guduvancherry, Kancheepuram District.

10. However, today, Mrs.Shaikh Mehrunisa, learned counsel appearing for the petitioner in H.C.P.No.3113 of 2015, submitted that Roshni Society, Guduvancherry, Kancheepuram District, has been closed.

11. Considering the entire material on record, we are of the view that the present Habeas Corpus Petition, alleging illegal detention and custody of minor girl, Anies Fathima, by the 6th respondent, is not at all maintainable, both on facts, as well as on law.

12. There is no illegal detention by the 6th respondent. Only after considering the contentions of the petitioner therein, in H.C.P.No.339 of 2015, dated 20.03.2015, enquiry with the children and other connected records and in the best interest of the children, to have their education, without any disruption, we directed the Inspector of Police, Perambalur Police Station, to find a suitable place for continuation of the education of the children and also for accommodation. Thus, Faiz Fathima, elder sister of the alleged detainee, is now continuing her education in Dhanalakshmi Srinivasan Polytechnic, Perambalur, from 2014 and so also, the minor girl, Anies Fathima, alleged detainee, was also accommodated in the 6th respondent- Anwarul Muslimeen Jamia Jannathu Niswan. Directions issued by us, earlier in H.C.P.No.339 of 2015, dated 20.03.2015 and continuation of education, at the abovesaid places, cannot, at any stretch of imagination, as illegal.

13. The only allegation, now made in H.C.P.No.3113 of 2015, against the 6th respondent, is that the minor girl, M.Annies Fathima, is not permitted to continue her further education and she has been detained, in the 6th respondent-Institution. Such a contention also cannot be countenanced, in view of the letter of the District Collector, Perambalur, dated 16.12.2015, stating that the alleged detainee, Anies Fathima, D/o.Munavur Hussain, is now admitted in 8th Standard in English Medium in Dhanalakshmi Srinivasan Matriculation

School and Hostel, in Perambalur on 14.12.2015 and she is not detained in the 6th respondent-Institution. The Child Welfare Committee, Perambalur, who is mandated under the provisions of the Juvenile Justice Act, to provide care and protection to the children, has also approved the admission and stay of the minor child, in Dhanalakshmi Srinivasan Matriculation School and hostel, Perambalur.

14. The only aspect to be considered, is whether, the tuition and hostel fees, have been paid by Mrs.Haseena, mother of the children, as per the earlier order of this Court in H.C.P.No.339 of 2015, dated 20.03.2015. In the said order, we have also requested Ms.Bader Sayeed, President of Roshini Society, Guduvancherry, Kancheepuram District, to extend financial support to children's basic amenities, education and such other incidental expenses, to be incurred by the children, in the event of the petitioner therein, not extending financial support.

15. On instructions, Mr.A.N.Thambidurai, learned Additional Public Prosecutor, submitted that the contention of the learned counsel for the petitioner herein that Roshini Society, Guduvancherry, Kancheepuram District, has been closed, is not correct, but hostel facility alone has been closed. According to him, Roshni Society continued to exist.

16. Learned Additional Public Prosecutor further submitted that Ms.Bader Sayeed, President of Roshini Society, Guduvancherry, Kancheepuram District, has agreed to extend the financial support to children's basic amenities, education and such other incidental expenses, if any request is made by the Child Welfare Committee, Chengalpattu, Kancheepuram District, in this regard. At this juncture, it should be noted that the District Collector, Perambalur, in his letter, dated 16.12.2015, has stated that rehabilitation measures would be taken care of, by the District Child Protection Unit (ICPS), Perambalur.

17. In the event of any difficulty in meeting out the expenditure, towards education and stay in the hostel and other incidental expenses, for the children, we direct the Child Welfare Committee, Chengalpattu, Kancheepuram, to address the competent authority, for release of funds, immediately, through the Child Welfare Committee, Perambalur, so that, the minor children, continue their education.

18. On the facts and circumstances of the case, the allegation of illegal detention of minor Anies Fathima, by the 6th respondent, is not made out. There is no illegal detention. Hence, Habeas Corpus Petition is not maintainable, and the same is dismissed. However, on the request of the learned counsel appearing for the petitioner that necessary directions

be issued to the School/College authorities, to have visitation rights, this Court is not inclined to order, at this juncture. The children have expressed their desire to meet once in a week and also to stay with their aunt, the petitioner herein, during holidays. However, liberty is given to the petitioner to approach appropriate forum, and if any, such request is made, the forum shall consider the said request, in the best interest of the children, in accordance with the provisions of the Juvenile Justice Act and the rules made thereunder. While doing so, desire of the children, as observed on the Collector's letter, shall be taken note of.

19. As regards the averments in Paragraph 3 of the affidavit, filed by the petitioner, learned counsel for the petitioner and the petitioner have made an endorsement, withdrawing the same. Registry is directed to strike down the same, from the affidavit.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skm

To

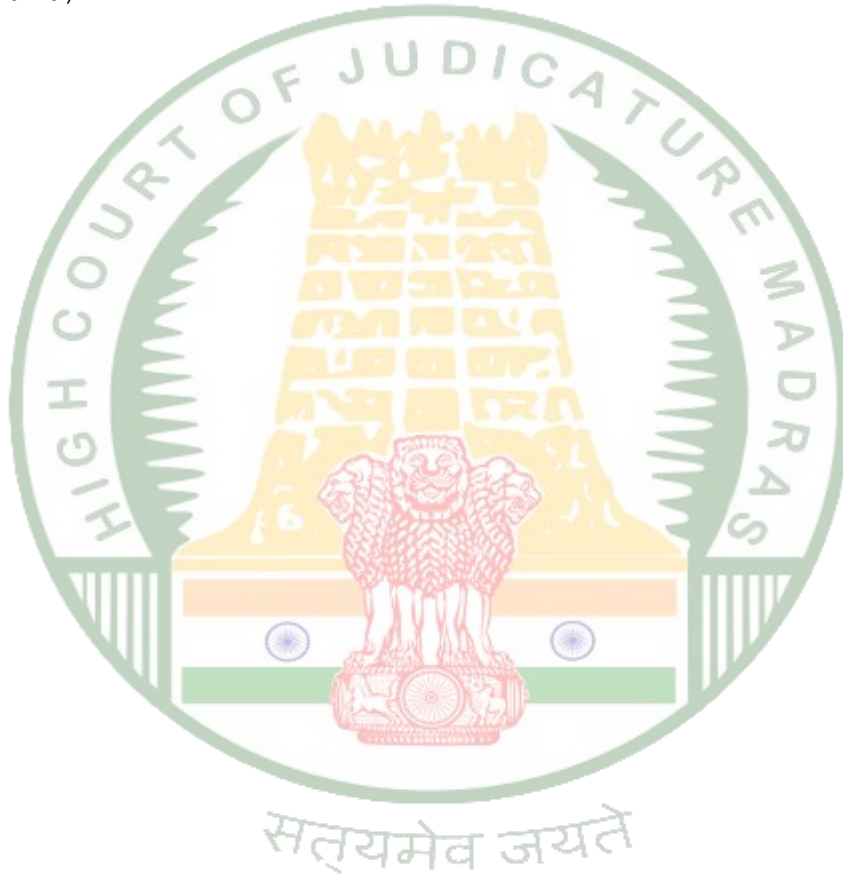
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6. The Additional Public Prosecutor,
High Court, Madras.

7. Mrs.Bader Sayeed,
No.IIIA, High Court Chambers,
High Court, Madras.

H.C.P.No.3113 of 2015

CA(CO)
CA(16/02/2016)



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