

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR.JUSTICE M.V.BHARATHIDASAN

H.C.P.No. 1036 of 2016

R.Senthil

... Petitioner/Husband
of the Detenue

Vs.

1. State Rep. by its
Inspector of Police,
All Women Police Station,
Ponneri.
2. The Inspector of Police,
E-3, Minjur Police Station,
Minjur, Tiruvallur District.
3. The Superintendent of Police,
Tiruvallur District,
Tiruvallur.
4. The Child Welfare Committee
Rep. by its President
IRCDS, 13 MDM Nagar,
Tiruvallur.
5. Murugan
6. K.Lalitha

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing respondents 1 to 4 to produce the petitioner's wife Mrs.Sankavi, W/o.R.Sendhil, aged about 16 years and set her at liberty.

For Petitioner : Mr.Ilanthiraiyan
for M/s. Sai Bharath and Ilan

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor
for R1 to R3

O R D E R

[Order of the Court was made by S.NAGAMUTHU, J.]

The petitioner has stated in paragraph No.3 of the affidavit that one Sankavi is his wife. He has described her as his wife in paragraph No.10 of the affidavit also. According to him, he had fallen in love with Sankavi, who according to him was admittedly 16 years of age (vide paragraph No.2 of the affidavit). He would further submit that he married the minor Sankavi on 28.08.2015 at Sri Pachaivazhiamman Devasthanam, Krishnapuram, Pakkam, Villupuram District and thereafter, they were living happily together as husband and wife.

2. While things stood thus, the grandmother of the detinue, namely, the 6th respondent herein filed Habeas Corpus Petition in HCP.No.3195 of 2015 before this Court alleging that the minor girl had been kidnapped. During the pendency of the said Habeas Corpus Petition, on notice, the second respondent herein produced the minor girl before this Court on 16.03.2016. On that day, it was reported before the earlier Division Bench (in which one of us was a party), that in respect of the missing of minor girl, a case had been registered in Crime No.478 of 2015 and during the course of investigation, the girl was secured and accordingly, she was produced before this Court. This Court, while closing the Habeas Corpus Petition in HCP.No.3195 of 2015, issued the following directions:

"3. Today, when the matter has been listed for hearing, the respondent Police has produced the detinue before this Court. As the detinue is a minor, we find it appropriate to direct the respondent Police to produce the detinue, before the District Child Welfare Committee, Tiruvallur and the District Child Welfare Committee, Tiruvallur, shall pass appropriate orders, considering the safety and the welfare of the minor detinue, as expeditiously as possible."

3. Now the petitioner has come up with this Habeas Corpus Petition claiming that the minor Sankavi, wife of Senthil (petitioner herein) should be set at liberty, as she is illegally detained by respondents 5 and 6. The fifth respondent is the father of the detinue and the sixth respondent is the grandmother of the detinue.

4. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the State.

5. The learned Additional Public Prosecutor would submit

that after the girl was secured, the investigation was further progressed, wherein, it came to light that the petitioner had committed offences under the POCSO Act. Therefore, the case was altered into one under offences under Section 4 and 6 of POCSO Act. The petitioner was arrested and remanded to judicial custody and later on he was released on bail. He would further submit that in compliance of the order passed by this Court earlier on 16.03.2016 in HCP.No.3195 of 2015, the Child Welfare Committee, entrusted the minor girl to respondents 5 and 6 and she is now in their custody and there is no illegal detention.

6. The learned counsel for the petitioner would submit that the committee did not pass any order at all. He would further submit that the petitioner has received a phone call from the minor girl and therefore, he has come up with this petition.

7. We have considered the above submissions.

8. Assuming that there was a phone call received from the minor, it is for the petitioner to ignore the same as in response to the said phone call, he cannot commit yet another crime against the child. Further, as submitted by the learned Additional Public Prosecutor, the child is in the safe custody of her father and grandmother, as per the order of the Child Welfare Committee. So far as the submission made by the learned Additional Public Prosecutor in this regard is concerned, we have no reason to doubt the correctness of the same. Therefore, we reject the argument of the learned counsel for the petitioner that no order has been passed by the Child Welfare Committee.

9. In our considered view, the petitioner, knowing fully well the provisions of the law and after having suffered detention for some time after arrest again claims himself to be the husband of minor Sankavi. In the affidavit, repeatedly, he has been mentioning Sankavi as his wife. It is not understood as to how he can claim himself to be the husband of the minor. This means that the petitioner is trying to abuse the process of Court by making false allegations and to thwart the investigation, which is in progress against him in respect of the offences committed by him under the POCSO Act.

10. The learned counsel for the petitioner would submit that the minor girl was pregnant out of the wedlock. If that is so, it is still more a serious offence. At any rate, the filing of the present Habeas Corpus Petition itself is an attempt to disturb the peace of the minor girl and her family members. Therefore, in our considered view, it would not be enough that the petition is dismissed. It is necessary that

we have to impose appropriate cost on the petitioner. Further, the petitioner, who is on bail is abusing the liberty granted by the Court in granting bail to him. Therefore, we are inclined to impose cost. When this was told, the learned counsel for the petitioner has offered to pay a sum of Rs.5,000/- as cost. The said statement is recorded.

11. In view of the above, this Habeas Corpus Petition is dismissed with a cost of Rs.5,000/- to be paid by the petitioner to the Hon'ble Chief Justice Relief Fund, within a period of two weeks.

Registry is directed to list the matter after two weeks for reporting compliance.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

svki/ds

To

1. The Inspector of Police,
All Women Police Station,
Ponneri.
2. The Inspector of Police,
E-3, Minjur Police Station,
Minjur, Tiruvallur District.
3. The Superintendent of Police,
Thiruvallur,
Thiruvallur District.
4. The President,
Child Welfare Committee
IRCDS, 13 MDM Nagar,
Thiruvallur.
5. The Additional Public Prosecutor
High Court, Madras.
6. The Section Officer,
Accounts Section,
High Court, Madras.

+1cc to M/s. Sai Bharath and Ilan, Advocate, S.R.No.30294

H.C.P.No.1036 of 2016

JSV(CO)

CA/14/06/2016)

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