

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.916 of 2016

G.Srinivasalu

..Petitioner

vs.

State rep. by

1.The Inspector of Police,
F-5, Pathirivedu Police Station,
Pathirivedu,
Tiruvallur District.

2.Saravanan

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the first respondent police to order production of the body and person of petitioner's daughter G.Jyothi, female, aged 16 years 11 months before this Court and set her at liberty.

For Petitioner : Mr.A.Balamurugan

For R1 : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

O R D E R

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

The petitioner is the father of one Ms.G.Jyothi, aged 16 years and 11 months. Her date of birth is 11.06.2009. The detainee was studying in a local school. According to the petitioner, on 24.01.2016, the second respondent eve teased her. He has further stated that on 06.04.2016, the second respondent kidnapped the detainee. In this regard, on his complaint, a case was registered in Crime No.164 of 2016 for "girl missing". Since no action was taken by the Police, the petitioner has come up with this Habeas Corpus Petition.

2. When this Habeas Corpus Petition came up for hearing on 29.04.2016, the learned Additional Public Prosecutor took notice

for the first respondent and notice and private notice was ordered to the second respondent. On 08.06.2016, when the Habeas Corpus Petition came up for hearing, the victim girl was produced before this Court. We enquired her and passed the following order:

"The petitioner is the father of one Ms.G.Jyothi, aged hardly 16 years 11 months. Her date of birth is 11.06.2009. The detinue was studying in a local educational institution. It is alleged that on 24.01.2016, the second respondent eve teased her. That was reported by the detinue to her parents. The petitioner gave a complaint to the Police in this regard. The second respondent was called for enquiry and he was warned.

2. Again the second respondent did not stop with that and he kidnapped the detinue on 06.04.2016 at 2.00 pm. The petitioner gave a complaint to the Police in this regard. The first respondent registered a case in Crime No.164 of 2016 for girl missing. Though, the petitioner was informed that the investigation was in progress, since, the minor girl was not secured, he was forced to file the present Habeas Corpus Petition. This Habeas Corpus Petition has been pending from 29.04.2016 onwards. The learned Additional Public Prosecutor appearing for the State also earlier had taken notice.

3. Today, when this Habeas Corpus Petition was taken up for hearing, the petitioner and his wife Mrs.Laxmi made appearance before this Court. The first respondent and the Deputy Superintendent of Police, Gummudipoondi, Mr.Sivalingam also made appearance. The first respondent produced the detinue minor girl Ms.Jyothi before this Court.

4. When we enquired Ms.Jyothi, she told us that she was not kidnapped by the second respondent and she was staying at her Aunt's house. This was disputed by the petitioner and his wife. They told that she did not stay at the sister's house of the wife of the petitioner at all. They further said that the girl was virtually kidnapped by the second respondent and they suspect that she was sexually exploited by him. They further submitted to this Court that even today, the girl was brought to the Court by the Police accompanied by the father of the

second respondent. We made extensive enquiry with the first respondent and one Sub Inspector who was also present before this Court. We expressed our dissatisfaction over the way in which the case has been handled. We have the benefit of going through the case diary. Though it is stated by the minor girl that she was staying at her Aunt's house, no investigation whatsoever was done in respect of the same to verify whether it is true or not and to verify whether she has been tutored to say so or out of fear for someone, she is saying so. When such a serious allegation is made by the parents of the detainee, there are reasons to believe that the minor girl was sexually exploited, the investigation should have been taken in a serious manner. The petitioner and his wife further submitted that they found the minor girl was wearing Thali and Metti, showing the marital status that she was already married.

5. But today, when the minor girl appeared before this Court, she is not wearing Thali and Metti. Even the Inspector of Police also submitted to this Court that earlier, the minor girl was wearing Thali and Metti. These materials are sufficient to make thorough investigation as it appears that the child has been abused and she has been tutored to tell a different story before this Court.

6. When this was pointed out, the learned Additional Public Prosecutor after taking some time before this Court, contacted the Superintendent of Police, Tiruvallur District, and later informed this Court that the Superintendent of Police, Tiruvallur District, has decided to transfer this case and to entrust the same to one Mr.Selvakumar, Deputy Superintendent of Police, District Crime Branch, Thiruvallur, for further investigation.

7. The learned Additional Public Prosecutor would further submit that one Mrs.Saraswathi, Inspector of Police, All Women Police Station, Tiruvallur would assist Mr.Selvakumar, Deputy Superintendent of Police, District Crime Branch, Thiruvallur in the investigation of this case. The said statement is recorded.

8. In our considered view, since, the detinue happens to be a minor child, thorough investigation shall be done by Mr.Selvakumar, Deputy Superintendent of Police, District Crime Branch, Thiruvallur, in accordance with law.

9. Now, turning to the custody of the minor child, the petitioner and his wife eventually made a request not to entrust the detinue to them because they are poor people having no wherewithall to keep a close watch always on the minor girl/detinue. They further submitted that the second respondent and his men may again kidnap the minor girl because, already they found the girl wearing Thali and Metti. They would further submit that keeping the minor child in their custody will be a big problem for them and it will not safe for the minor child also. Therefore, as per the Full Bench Judgment of this Court in Shivakumar V. State (2011(5) CTC 689), we are forced to send the child to be kept in the Government Children's Home for Girls, Kellys, Chennai. The Superintendent, Government Children's Home for Girls, Kellys, Chennai, shall not permit anyone to see the child, except her parents.

10. Registry is directed to list this matter on 22.06.2016. On that date, the minor girl shall be produced by the Superintendent, Government Children's Home for Girls, Kellys, Chennai, before this Court at 10.30 am.

11. The petitioner and his wife are also directed to be present before this Court on that date. Mr.Selvakumar, Deputy Superintendent of Police, District Crime Branch, Thiruvallur is directed to file a status report on that date about the further investigation done in this case."

3. Today, as per the said direction, the girl was produced before his Court. She told that she is willing to go with her parents and to be with them. The petitioner and his wife also made appearance. They submitted that they would take the detinue in their custody, keep her and maintain her. They would further state that they would give adequate protection for the safety of the girl.

4. Mr.Selva Kumar, the Deputy Superintendent of Police, District Crime Branch, Thiruvallur, who is presently investigating the case submitted to this Court that during investigation it has come to light that the second respondent has kidnapped the detainee and raped her, thereby committing offence under POCSO Act. The case has been accordingly now altered. The second respondent was arrested and he has been remanded to judicial custody. The detainee was sent for medical examination, which has also proved that she was subjected to sexual intercourse. He would further submit that statement under Section 164 Cr.P.C has already been recorded from her. Thus, he has no objection for the girl being entrusted to the custody of her parents. The said statement is also recorded.

5. In view of the above position, this Habeas Corpus Petition is disposed of entrusting the custody of the minor girl viz., Ms.G.Jyothi to the petitioner and his wife Lakshmi. They shall keep the minor girl without causing any harm either physically or mentally to her. The Deputy Superintendent of Police shall ensure the safety of the minor girl and her parents, by arranging periodical visits of some police and see that the girl is kept safely. The President, District Child Welfare Committee, Tiruvallur District shall also make visits as and when required and ensure that the child is not disturbed in any manner. If need be, they may arrange for counselling also for the child.

svki

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

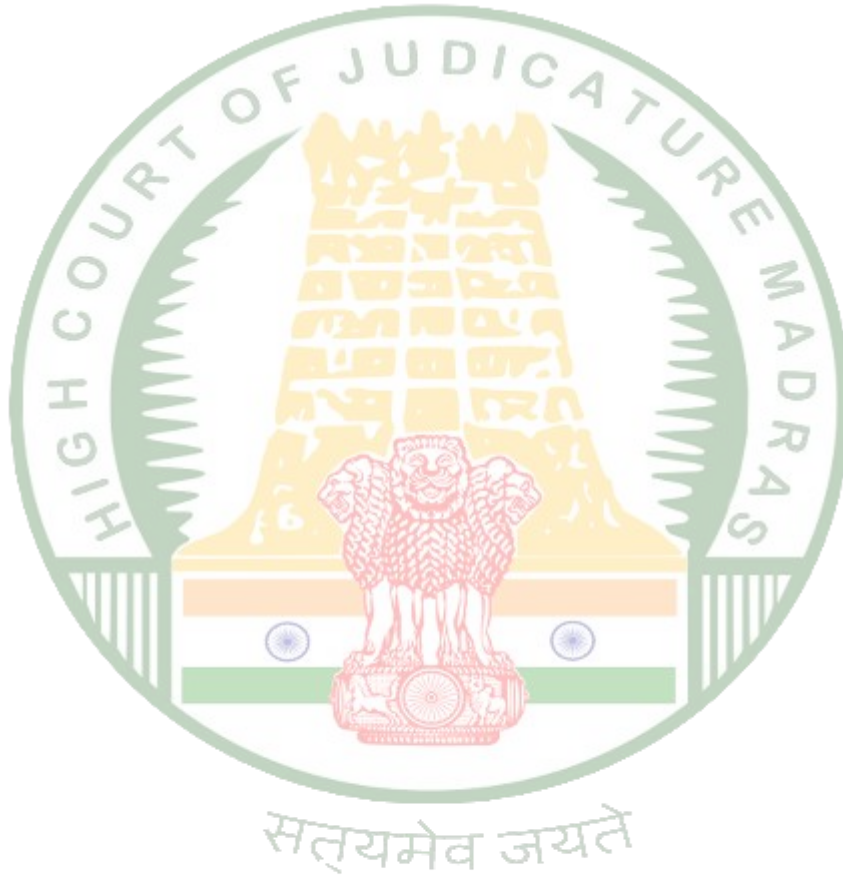
- 1.The Inspector of Police,
F-5, Pathirivedu Police Station,
Pathirivedu,
Tiruvallur District.
2. The Superintendent of Police
Tiruvallur District.
3. The Deputy Superintendent of Police
District Crime Branch, Tiruvallur.
4. The President, District Child Welfare Committee,
Tiruvallur District.

5. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.A.Balamurugan, Advocate Sr 34640

KR/22/6/16

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