



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P(MD)No.545 of 2016
and
Cr1.M.P. (MD)No.4483 of 2016

Murugan : Petitioner
Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Theni District.

2.The Inspector of Police,
Devadanapatti Police Station,
Theni District.

3.Rajapandi : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the body of my daughter namely Vairamani, D/o.Murugan, aged about 17 years before this Court and set her at liberty.

For Petitioner : Mr.C.Jeganathan

For Respondents 1&2 : Mr.C.Mayil Vahana Rajendran,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

This Habeas Corpus Petition is filed by a resident of Perumalkovil Patti, Theni District, for a direction to the first and second respondents to produce the body of his daughter Vairamani and set her at liberty.



his daughter was found missing and he was informed that it was a case of kidnapping by the third respondent herein. The police registered a case in Crime No.202 of 2016 under Section 366(A) of the Indian Penal Code.

3. The second respondent produced the detenu before the learned Judicial Magistrate, Periyakulam on 06 April, 2016. The learned Judicial Magistrate, after conducting enquiry, permitted the detenu, who is a minor, to go with her parents. It is the case of the petitioner that immediately after passing the order by the learned Magistrate, the detenu was again abducted by the third respondent just outside the premises of the Court. The petitioner, therefore, filed this Habeas Corpus Petition.

4. This Court issued notice to the respondents on 27 April, 2016, directing the second respondent to trace out and produce the detenu on or before 23 June, 2016.

5. Subsequently, by order in CrI.M.P.(MD)No.4483 of 2016, the hearing of this case was advanced.

6. When the Habeas Corpus Petition was taken up for hearing on 09 June, 2016, we perused the case file produced by the second respondent. We found that the second respondent has not taken any earnest efforts to trace out the minor. Therefore, we passed the following order:

"The matter is advanced today pursuant to the application filed by the petitioner and taking into account the background facts.

2. According to the petitioner, the detenu was earlier kidnapped by the third respondent. The police secured and produced the detenu before the learned Judicial Magistrate, Periyakulam and custody was given to the petitioner on 06.04.2016. However, she was again kidnapped by the 3rd respondent and his men, when the detenu was proceeding along with the petitioner to her residence. In fact, the kidnap took place just outside the Court premises. Thereafter, the petitioner preferred the present Habeas Corpus Petition.

3. Even though sufficient time was given to the second respondent to trace out the detenu, no effective steps appear to have been taken by the 2nd respondent.

4. We are therefore of the view that reasonable time should be given to the 2nd respondent



to produce the detenu. Post the matter on 16.06.2016, for production of the detenu, failing which, the Superintendent of Police, Theni, shall appear before us on 17.06.2016."

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7. The learned Additional Public Prosecutor made a mention before us on 13 June, 2016 that the second respondent secured the detenu on 11 June, 2016 and he has already produced her before the Court. The learned Additional Public Prosecutor filed a memo to that effect. Accordingly, we have taken up the matter.

8. We examined the detenu at the first instance. The detenu informed us that she is presently residing along with one Kalimuthu and is pursuing her studies. The detenu informed us that the third respondent is an auto rickshaw driver. However, she has no connection with him. Thereafter, we examined the said Kalimuthu and his wife. The person, by name Kalimuthu, admitted that he is the father of the third respondent and the minor is staying with him. Though initially Kalimuthu and his wife maintained that they are the close relatives of the petitioner, subsequently, they have denied the said statement. In fact, the wife of Thiru.Kalimuthu tendered apology for making a false statement at the first instance to the effect that she is a close relative of the petitioner and that she is not the mother of the third respondent.

9. We have, thereafter, examined the petitioner and his wife. The petitioner very categorically stated that he has absolutely no connection with the so called Kalimuthu and according to him, the said Kalimuthu is none other than the father of the third respondent who abducted the minor on two occasions.

10. The statement of Thiru.Kalimuthu and his wife indicates that they are taking advantage of the entry regarding the father's name of the third respondent as indicated in the Habeas Corpus Petition and denying their relationship with Rajapandi, who is stated to have abducted the detenu.

11. The detenu originally stated before us that she wanted to go only with the said Kalimuthu. When we made it very clear that it would not be possible to send the minor with strangers, she agreed to go with the petitioner.

12. Since the detenu is a minor, we have no other alternative than to send her with the parents. We, accordingly, handed over the detenu to the petitioner and his wife who were present in Court.

<https://hcservices.ecourts.gov.in/hcservices/> The learned counsel for the petitioner submitted that though the third respondent and his men abducted the detenu on two



occasions, the police have not taken any action against them. We do see considerable force in the submission made by the learned counsel for the petitioner.

14. The second respondent, throughout the proceedings, maintained that he has no information with regard to the whereabouts of the third respondent. It was only when we directed the Superintendent of Police, Theni, to appear in person, in case the second respondent is not in a position to produce the detenu, he took efforts to produce the minor before us. We have reasons to believe that there is a collusion between the abductors and the second respondent. The second respondent admitted in open Court that the minor was not sent for medical examination, in spite of the act of kidnapping her.

15. We direct the Superintendent of Police, Theni District, to transfer the investigation of the case in Crime No.202 of 2016 to another Inspector of Police. The Superintendent of Police is directed to instruct the concerned Inspector of Police to cause examination of the minor by a Medical Officer of the District Hospital, Theni and obtain a report. There shall be a further direction to the police to take action against the abductors taking into account the age of the minor and various offences committed by them. We direct the Superintendent of Police, Theni, to submit an action taken report before this Court on 04 July, 2016.

16. The Habeas Corpus Petition is disposed of with the above direction.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

- 1.The Superintendent of Police,
Office of the Superintendent of Police, Theni District.
- 2.The Inspector of Police,
Devadanapatti Police Station, Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SDR/DB/23.06.2016/4P/4C

Order made in
H.C.P(MD)No.545 of 2016
13.06.2016