

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2017

DELIVERED ON : 19.12.2017

Coram

The Honourable Mr. Justice RAJIV SHAKDHER
and
The Honourable Mr. Justice N. SATHISHKUMAR

H.C.P.No.1718 of 2017

M.Haseena

.. Petitioner

Vs.

1. The Director General of Police,
Mylapore, Chennai.
2. The Superintendent of Police,
Kancheepuram District.
3. The Inspector of Police,
E-8, Kelambakkam Police Station,
Old Mahabalipuram Road,
Kelambakkam,
Tamil Nadu-603 103.
4. The District Collector,
Kancheepuram District.
5. Child Welfare Committee,
Government Special Home,
Opp. To Taluk Office,
Chengalpet-603 002
Kancheepuram District.
6. The District Social Welfare Officer,
No.43, 2nd Street, Gandhi Nagar,
Near IOB, Kancheepuram-631 502.
7. The District Collector,
Perambalur,
Perambalur District-621 212.

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8. Child Welfare Committee,
Perambalur,
Perambalur District-621 212.
 9. Dhanalakshmi Srinivasan Polytechnic College,
Perambalur,
Perambalur District.
 10. The Deputy Superintendent of Police,
Perambalur,
Perambalur District.
 11. Dhanalakshmi Srinivasan Matriculation School,
No.273-C, Thuraiyur Road,
Perambalur District.
 12. Anwarul Muslimeen Jamai Jannathu Niswan
(Madharsa), Vadakku Mathavi Road,
Perambalur District.
 13. Sameena Kurshith
 14. Kurshith Basha
 15. Shakira
- ... Respondents

* * *

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents 2 and 3 to produce the body of the detinue, the petitioner's daughters, namely, Faiz Fathima, who has just completed 18 years of age and Anies Fathima aged about 14 years, presently, in the custody of 13th to 15th respondents, before this Court and handover their custody to the petitioner so as to enable them to continue their education and their respective School and College.

* * *

For Petitioner : Mr.T.C.S.Raja Chockalingam

For Respondents: Mr.V.M.R.Rajentran,
Additional Public Prosecutor
for RR 1 to 4, 6, 7 and 10
Ms.Shaikh Mehrunnisa
for RR 5, 13 to 15

Ms.George Graham for
Devadason & Sagar for R12

No appearance for RR 8, 9 and 11

* * *

O R D E R

RAJIV SHAKDHER, J.

1. This is a petition filed by the mother of the two detainees, whereby, assistance of this Court is sought to secure the custody of her two children, Ms.Faiz Fathima, who is aged 18 years, and Ms.Anies Fathima, who is aged 14 years, from respondents No.13 to 15.

1.1. Respondent No.13 is the sister of the petitioner; respondent No.14 is her brother-in-law; and, respondent No.15 is the daughter of respondents No.13 and 14.

2. Notice, in this petition, was issued by the predecessor Bench on 14.09.2017. The matter came before this Bench on 06.10.2017, when, the older of the two children, i.e., Ms.Faiz Fathima was produced in Court.

2.1. On that date, we had interacted with Ms.Faiz Fathima, whereupon, after recording her observations, we had issued the following direction; the relevant part of the which is set forth hereafter:

"..... 3. We have, interviewed Ms.Faiz Fathima. Ms.Fathima says she has completed her Diploma in E.E.E. from Dhanalakshmi Srinivasan Polytechnic College, (in short "Institute") situate at Perambalur.

4. Ms.Faiz Fathima has expressed her desire to remain in the company of her Aunt, Respondent 13, i.e., Ms.Sameena Kurshith and Respondent 14, Mr.Kurshith Basha, husband of Ms.Sameera Kurshith.

5. Ms.Faiz Fathima has also told us, clearly, that she does not wish to return to her mother.

6. According to her, she was forced to enter into sexual relationship with strangers.

7. Ms.Faiz Fathima says that her younger sibling i.e., Ms.Anies Fathima was, similarly, forced to enter into sexual relationship, with strangers by the petitioner.

8. We are also informed that, presently, Ms.Anies Fathima is in the care and custody of a Government Children's Home, located in Chengleput.

9. The record shows that the petitioner had earlier filed Habeas Corpus Petition, which was numbered as H.C.P.No.339 of 2015.

9.1. A perusal of orders dated 9-2-2015 and 20-3-2015, broadly, establishes what is stated above.

9.2. As a matter of fact, a perusal of paragraph No.4 of the order dated 20.03.2015, shows that a criminal case being : Cr.No.820 of 2015, under Sections 8, 17 and 21 of POCSO Act, r/w Section 23 of the Juvenile Justice Act, has been registered against the petitioner.

10. Furthermore, we are informed that Ms.Faiz Fathima, the elder daughter of the petitioner, has not been issued a Diploma Certificate by the Institute due to the balance fee, amounting to Rs.1.50 lakhs, not having been paid.

11. In these circumstances, for the moment, following directions are issued:

(i) The Child Welfare Committee i.e., Respondent No.5, which is represented by Ms.Shaikh Mehrunisa, Advocate, shall file a detailed report with regard to the two children, i.e., Ms.Faiz Fathima and Ms.Anies Fathima.

(ii) The learned Additional Public Prosecutor will also file a status report with regard to Cr.No.820 of 2015, on the file of J-8, Neelankarai Police Station.

(iii) The petitioner will deposit a sum of Rs.1.50 lakhs with the Registrar General of this Court before 31.10.2017.

12. Re-notify the matter on 31.10.2017."

2.2. Consequent thereto, the matter was taken up by us on 31.10.2017, when, we recorded the fact that the petitioner had deposited a sum of Rs.1,50,000/- (Rupees one lakh and fifteen thousand only) with the Registrar General of this Court by way of a Demand Draft, so that an equivalent amount could be remitted to Dhanalakshmi Srinivasan Polytechnic College (in short, "the Institute"), for obtaining Transfer Certificate, Mark Sheet and Course Completion Certificate of her elder daughter Ms.Faiz Fathima.

2.3. In the very same order, we had also recorded the fact that status reports have been filed by respondent No.5, i.e., the Child Welfare Committee, Chengalpet, (in short, "CWC"), respondent No.7, i.e, the District Collector, Perambalur, as also the investigating officer, i.e., the Inspector of Police, J-8, Neelankarai Police Station.

2.4. In addition thereto, we had also indicated in the order that Ms.Faiz Fathima should remain present in Court on the next

date.

2.5. Accordingly, the matter was posted today, i.e., 20.11.2017.

3. Today, since, Ms.Anies Fathima, who is the younger daughter of the petitioner, was present in Court as well, we interacted with her. Ms.Anies Fathima, told us in no uncertain terms that she would not want to be in the company of her mother, the petitioner, as she had forced her to enter into sexual relationship with strangers.

3.1. As would be evident from the proceedings of this Court held on 06.10.2017, the elder daughter of the petitioner, i.e., Ms.Faiz Fathima, made a similar assertion. In fact, Ms.Faiz Fathima was also present in Court.

4. The petitioner, who was present in Court, on the other hand, refuted the allegations.

5. We have also gone through the status reports filed on behalf of respondent No.7, i.e., the District Collector, Perambalur, Inspector of Police, J-8, Neelankarai Police Station, and the report filed by the CWC.

5.1. A perusal of the status reports and the record placed before us shows the following :

(i) That the petitioner's partner, one, Mr.Soloman alias Narayanasamy is accused of sexually abusing Ms.Faiz Fathima and Ms.Anies Fathima. Based on a complaint made by Ms.Faiz Fathima and Ms.Anies Fathima dated 09.01.2015, with CWC, a criminal case has been registered against both the petitioner as well as her partner, Mr.Soloman. The case is registered as Crime No.820 of 2015. The petitioner and her partner have been booked under the provisions of Section 8, 17 and 21 of POCSO Act read with Section 13 of the Juvenile Justice Act, 2006.

(ii) That the petitioner had, earlier, filed a Habeas Corpus Petition for a similar relief. The said petition was numbered as H.C.P.No.339 of 2015. In the said HCP, orders were passed by this Court on various dates. The Division Bench, in that petition, also recorded the fact that the children, i.e., Ms.Faiz Fathima and Ms.Anies Fathima, do not wish to return to the petitioner. This aspect is noticed by the Division Bench in its order dated 20.03.2015.

(ii)(a) It is also relevant to record that in an earlier order it was noticed that the CWC, had reported to the Inspector of Police, Neelankarai Police Station, that the aforementioned children could not be handed over to the biological mother, i.e., the petitioner. It is, in this connection, that the Division Bench had issued directions to accommodate the elder sibling, i.e., Ms.Faiz Fathima in the Institute, while Ms.Anies Fathima, the younger sibling, was directed to be accommodated in Anwarul Muslimeen Jamia Jannathu Niswan (Madharsa), Perambalur,

[in short, "the Madharsa"].

(ii)(b) To be noted, HCP No.339 of 2015, was closed by the Court vide order dated 20.03.2015.

(iii) Furthermore, the record shows that respondent No.13, i.e., the sister of the petitioner, filed a Habeas Corpus Petition being : HCP No.3113 of 2015, whereby, she sought a direction against respondent No.6 therein, i.e., the Madharsa, in which, Ms.Anies Fathima was lodged. This petition was, apparently, filed by respondent No.13 for the reason that Ms.Anies Fathima, who was lodged in the aforementioned Madharsa, was not being educated. It appears that prior to Ms.Anies Fathima's admittance to the Madharsa, she had studied upto Class VII, in an English medium school.

(iii)(a) It appears that HCP No.3113 of 2015, was dismissed by the Division Bench, as according to the Division Bench, Ms.Anies Fathima was not in illegal detention. However, while, dismissing the petition, the Court observed that the CWC, should address the competent authority for release of funds, so that, the minor child, i.e., Ms.Anies Fathima could continue her education.

(iv) The record also shows that at some point in time, the authorities concerned in the aforesaid Madharsa transferred Ms.Anies Fathima to the hostel attached to the Institute at Perambalur, albeit, under the care and custody of the CWC, Perambalur.

(v) The record also shows that yet another Habeas Corpus Petition, i.e., HCP No.759 of 2017, was preferred by respondent No.13, i.e., the sister of the petitioner. This time around relief was sought qua the elder sibling, i.e., Ms.Faiz Fathima. The direction sought was that she should be released from the custody of CWC, Perambalur.

(v)(a) The record shows that vide order dated 01.06.2017, the aforesaid HCP was disposed of, after the Court had noted the fact that she had turned major and therefore, could charter her own course of action.

6. Our interaction with Ms.Faiz Fathima reveals that she is, presently, staying with respondents No.13 and 14.

6.1. We may also record that we are informed that the Registrar General of this Court is in the process of approaching the Institute for release of the Transfer Certificate, Mark Sheet and Course Completion Certificate, upon payment of the aforementioned sum of Rs.1,50,000/, which was deposited by the petitioner, pursuant to the order of this Bench dated 06.10.2017.

7. Before we proceed further we may also advert to the report of the District Collector, Perambalur. In his report, the District Collector has also recorded that Ms.Faiz Fathima and Ms.Anies Fathima want to be in the company of their aunt-

respondent No.13, and that, they do not wish to return to the petitioner.

8. Having regard to the aforesaid circumstances, we are of the view that in so far as Ms.Faiz Fathima is concerned, orders have already been passed by the Division Bench of this Court in HCP No.759 of 2017, to the effect that, since, she is a major, she is free to take decisions concerning her own life.

8.1. In so far as Ms.Anies Fathima is concerned, as observed above, it is clear that she has no desire to be with the petitioner.

8.2. As a matter of fact, we noticed during our interaction with her that she carried pent-up anger against the petitioner. In fact, at one stage, Ms.Anies Fathima became physically aggressive in Court, with the petitioner.

8.3. Our sense, is that, her anger stems from the fact that the petitioner, according to her, has allowed abuse of both herself and her elder sister.

8.4. We are informed, presently, Ms.Anies Fathima, is housed in a home, going by the name "Love Care Centre" situate at Aarapakkam, Kancheepuram District. This arrangement has been made by the CWC. We are further informed that Ms.Anies Fathima is studying in Class X in an English medium school going by the name Aarapakkam Government Higher Secondary School, Kancheepuram District.

8.5. Ms.Anies Fathima's fees, at present, is being paid by the aforementioned NGO, i.e., Love Care Centre.

8.6. Respondent No.13, evidently, brings Ms.Anies Fathima home during vacations with the permission of the CWC.

8.7. Given these circumstances, in our opinion, no relief can be granted to the petitioner in this petition.

9. Needless to say that investigation in Crime No.820 of 2015, would be taken to its logical conclusion.

10. Furthermore, the Registrar General of this Court shall act on the directions contained in our order dated 31.10.2017.

10.1. Upon remitting of the sum equivalent to Rs.1,50,000/- to the Institute, the Registrar General will receive the Transfer Certificate, Mark Sheet and the Course Completion Certification of Ms.Faiz Fathima.

10.2. These documents will, thereafter, be handed over by the Registrar General to Ms.Faiz Fathima against proper receipt, which shall be placed on record.

11. The captioned petition is disposed of, in the aforesaid terms.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The Director General of Police,
Mylapore, Chennai.
2. The Superintendent of Police,
Kancheepuram District.
3. The Inspector of Police,
J-8, Neelankarai Police Station,
Chennai.
4. The District Collector,
Kancheepuram District.
5. The Child Welfare Committee,
Government Special Home,
Opp. To Taluk Office,
Chengalpet-603 002
Kancheepuram District.
6. The District Social Welfare Officer,
No.43, 2nd Street, Gandhi Nagar,
Near IOB, Kancheepuram-631 502.
7. The District Collector,
Perambalur, Perambalur District-621 212.
8. The Principal,
Dhanalakshmi Srinivasan Polytechnic College,
Perambalur, Perambalur District.

10.The Deputy Superintendent of Police,
Perambalur, Perambalur District.

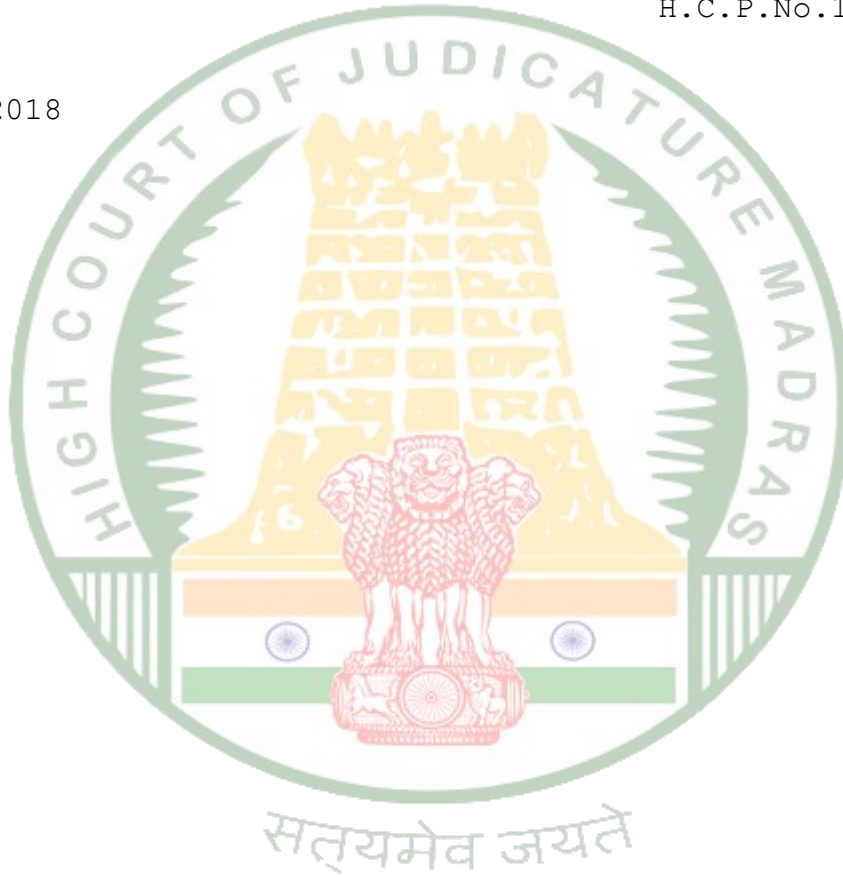
11.The Public Prosecutor,
Madras High Court, Chennai.

12.The Registrar General,
High Court, Madras.

+lcc to M/s.Devadason & Sagar, Advocate sr.no.90372

H.C.P.No.1718 of 2017

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