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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.05.2017

CORAM:
THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P (MD) No.605 of 2017

K.Vijayarani : Petitioner

Vs.

1.The Superintendent of Police,
O/o.The Superintendent of Police,
Kanyakumari District.

2.The Inspector of Police,
Ethamozhi Police Station,
Kanyakumari District.

3.The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.

4.M.Naveen,

5.R.Jeyarani : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the respondents No.1 to 3 to produce the person or body of the Petitioner's minor daughter namely Jesila (17/17) D/o.Kannan @ Morris before this Court and set her at liberty.

For Petitioner : Mr.T.Lajapathi Roy
For Respondent Nos.1 to 3 : Mr.C.S.Durai Pandian,
Additional Public Prosecutor
For Respondent No.5 :Mr.R.Bala Krishnan

O R D E R

[Order of the Court was made by T.RAJA, J.]

The petitioner, namely, K.Vijayarani, the mother of the detenu, namely, Jesila, has come to this Court seeking a Writ of Habeas Corpus, directing the respondents No.1 to 3 to produce the person or body of the Petitioner's minor daughter, namely, Jesila (17/17), D/o.Kannan @ Morris, before this Court and set her at liberty.



2. The learned counsel appearing for the petitioner submitted that the petitioner, her husband and the detenu are residing peacefully. Taking advantage of the fact that the petitioner's husband is a physically challenged person, who has lost his hands and one leg in an accident, the fourth respondent Mr.M.Neveen forcibly knocked the door of the petitioner's house at 11.30 p.m., on 10.09.2016 and opened the door and finally, kidnapped the petitioner's minor daughter at knife point. The petitioner's husband, who is a physically challenged person was unable to stop the said illegal activity made by the fourth respondent, who is already a married man and having two children. Therefore, the petitioner lodged a complaint to the Inspector of Police, South Thamaraikulam Police Station, Kanyakumari District on 19.02.2017 and the same has also been registered in Crime No.44 of 2017, for the offence punishable under Sections 366 (A) of IPC @ 366 (A), 342, 452 of IPC and Sections 4, 5(1) and 6 of POCSO Act, 2012. In the meanwhile, the fourth respondent has obtained Anticipatory Bail by approaching the Fast Track Mahila Court, Kanyakumari at Nagercoil, in Cr.M.P.No.267 of 2017, vide order dated 28.04.2017.

3. The learned Additional Public Prosecutor appearing for the respondents No.1 to 3 would submit that although the third respondent had registered the above said case, the same was subsequently transferred to All Women Police Station, Kanyakumari, on 20.04.2017. Now, the Inspector of Police, All Women Police Station, Kanyakumari, is conducting investigation in that case.

4. This Court while entertaining this Habeas Corpus Petition, issued a notice on 10.05.2017. Pursuant thereto, the detenu was secured and produced before us.

5. Parents of the detenu and the fifth respondent, who is sister of the petitioner also appeared before us. After a formal interrogation with the father and mother of the detenu, the parents have expressed their difficulty in taking the detenu back to their home citing a reason that everyday, the fourth respondent, namely, M.Naveen is frequently visiting the fifth respondent's house, wherein the detenu has been taking shelter and he has been giving unnecessary phone calls to the parents of the detenu threatening that if they further interfered with the life of the detenu, they would be done away with.

6. In view of the said statement, we posed a question to the parents of the detenu, since the detenu is minor as on today, her custody should be taken by them as legal guardian. The parents of the detenu jointly replied stating that they are not in a position to take the custody of the detenu apprehending further complications for the reason that the police had not taken any legal action against the fourth respondent when they reported to



the police station on receipt of threatening phone calls from the fourth respondent.

7. At this point of time, the learned Additional Public Prosecutor has produced the CD file.

8. A perusal of the CD file shows that the Child Welfare Committee, Kanyakumari District, also after examining the detenu and the unwillingness of the parents of the detenu to take the detenu back to their home, entrusted the custody of the minor detenu with the fifth respondent, namely, R.Jeyarani, W/o.Ramu, who is the sister of the petitioner herein.

9. The documents produced by the learned Additional Public Prosecutor shows that the detenu in her own handwriting wrote a letter stating that she is not ready and willing to go with her parents and yet another statement given by the fifth respondent, namely, R.Jeyarani, W/o.Ramu, shows that she is prepared to take care of the detenu at her home. Therefore, the Child Welfare Committee keeping in mind the fact that the detenu is a minor, took a decision to send her back to her parental home. But, peculiarly and surprisingly, the parents expressed their unwillingness to take the detenu to their home for the reason that the fourth respondent has been frequently giving phone calls threatening them not to interfere with the life of the detenu. Therefore, the detenu was sent along with the fifth respondent, who is the sister of the petitioner.

10. It is seen that the registration of the case against the fourth respondent has ultimately ended in granting anticipatory bail to him by the Fast Track Mahila Court, Kanyakumari at Nagercoil. We are surprised to see that how this is possible for the Mahila Court to grant anticipatory bail to the fourth respondent, who is said to have kidnapped a minor girl.

11. In view of the above stated facts and circumstances, since the parents are not willing to take back the detenu with them, we are constrained to send the detenu, namely, Jesila, to Vidiyal Home, Muthupatti, Near Palanganatham, Madurai, till she attains the age of 18 years. We direct the Authorities of the Home not to permit the fourth and the fifth respondent at any point of time, to see the detenu.

12. We are also giving liberty to the parents of the detenu to approach the jurisdictional police station for police protection



if situation warrants. If any such complaint is lodged by the parents of the detenu, the concerned Police Officers are directed to register a case against the intruder.

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With above directions, this Habeas Corpus Petition is closed.

Sd/-
Assistant Registrar

/ True Copy \

Sub Assistant Registrar

KM/PM

To

- 1.The Superintendent of Police,
O/o.The Superintendent of Police,
Kanyakumari District.
- 2.The Inspector of Police,
Ethamozhi Police Station,
Kanyakumari District.
- 3.The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.
4. The Fast Track Mahila Court,
Kanyakumari at Nagercoil.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 6.The Superintendent, Vidial Home,
Muthupatti, Near Palanganatham, Madurai.

MAS/JC/SAR4:11.05.2017:4P-7C

H.C.P (MD) No.605 of 2017
Dated:11.05.2017