

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HON'BLE MRS. JUSTICE S. RAMATHILAGAM

H.C.P. No.1590 of 2017

Bilal ... Petitioner

Versus

1. The Commissioner of Police,
Sirupooluva Patti,
Coimbatore.
2. The Inspector of Police,
Kaniyamuthur Police Station,
Coimbatore. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the body of the detainee namely Jawfer Sathick, aged 21 years, S/o. Bilal, whose whereabouts was not known and produce the detainee before the Court and hand over his custody to the petitioner.

For petitioner : Mr.A. Raja Mohamed
For respondents : Mr.R.Ravichandran,
Government Advocate

ORDER

(Order of the Court was made by S.RAMATHILAGAM, J.)

The relief sought for in this Habeas Corpus Petition is for a direction to direct the respondents to produce the body of missing person namely Jawfer Sathick, aged 21 years, S/o. Bilal, whose whereabouts was not known and produce the missing person before this Court and hand over him to the custody of the petitioner.

2. The petitioner has stated in his affidavit that he has two sons and one daughter. The elder son, is aged about 21 years and the second son, is aged about 19 years and the daughter is aged about 5 years.

3. The petitioner has further stated that he is the sole bread winner of the family and he is working in a lorry work shop. The missing person Jawfer Sathick, who is his elder

son, is a mentally challenged person right from his birth and also prone to Epilepsy for which he also underwent treatment. He has further stated that his wife was taking care of him (missing person). In spite of proper care taken by the family members, his elder son will frequently leave from his home, but he will be found easily within a day as he will be in any of his neighbours' home. The petitioner further states that his elder son left the home on 01.08.2017 at around 1.00p.m and till date he could not be traced. Due to mental health, he cannot convey where he is or in which place he is staying. The petitioner has further detailed about the features of his elder son that his right hand was bended near the chest and there is a scar near the eyes. In spite of search made by the petitioners family and his friends to find out the whereabouts of his elder son and to secure him, they could not succeed. Hence, the petitioner preferred a complaint before the second respondent on 07.08.2017 and a case was also registered in Crime No.676 of 2017.

4. On 08.08.2017, the petitioner has received a call from one Vinoth from Vannarpettai, who threatened the petitioner that his son was abducted from him and he demanded money to release his son. The said Vinoth also furnished his bank details for transferring the money demanded by him. The grievance of the petitioner is that though the aforesaid information was furnished to the second respondent, there is inaction on the part of the respondents. The petitioner was put to untold mental agony and hence he has preferred this petition for the issue of writ in the nature of Habeas Corpus Petition directing the respondents to produce the body of the detainee Jaffar Sathick and produce before the Court.

5. In the status report, it was stated that on receipt of a complaint from the petitioner, the respondent police registered a case under Section "man missing" and the respondent police formed a Special team under the head of Inspector of Police Tr. Murugesan. The investigation was taken up by the Inspector of Police, who examined the father, mother, brother and uncles of the detainee and recorded their statements and the pamphlets containing the details of the detainee along with the photo was sent to all the police stations in and around Coimbatore city and important places. Publication was also made in several local daily newspapers. The Special team formed to investigate the case went to various districts, viz., Coimbatore, Kinathukadavu, Pollachi, Anaimalai, Aazhiyar, Sulur, Karamadai, Mettupalayam, Tiruppur Districts Palladam, Dharapuram, Dindigul District Ottanchathiram, Palani, Nilgiri District Coonoor, Ooty and Thirunelveli Districts etc and till date the team has been searching the detainee in and around public gathering places such as Temples, Bus stand, Railway Station, Shopping Complex, Government Hospitals, Mortuaries, Homes, Orphanages, Rehabilitation Centre etc. of the above said districts on various dates, but till date no clue could be obtained.

6. On perusal of records, it is observed that the status report was already filed by the respondent police and from which, it is observed that one Vinoth referred, by the petitioner, who made a call to the petitioner that he had abducted the petitioner's son and also demanded some money for releasing him. The respondent police investigated the bank account number given and verified it was a bogus account number. Further, it reveals from the status report that the respondent police collected the call details from the service provider and obtained the name and address of the person pertaining to the said mobile number, viz., Sekar at Tiruvotriyur. On verification of the said address by the respondent police, it was found that nobody was residing at the address given by the service provider and one person viz. Ram Pratheep, Postman, Tiruvotriyur Post Office was examined. He has stated that Tr. Sekar house remained vacant for the past five years. Hence, it is clear that the respondent police are taking hectic steps in securing the detainee.

7. During the investigation, on 22.11.2017, the petitioner appeared before the respondent police station along with the said Vinoth, whose original name was Sekar @ Rajasekar. The petitioner has further stated that the said Vinoth threatened him to give Rs.50,000/- to release the detainee, otherwise, he would take away the kidney of his son. While so, the petitioner and his relative round up the Sekar @ Rajasekar and produced him before the respondent police. A case was registered in Crime No.1025 of 2017.

8. Further investigation reveals that the original name of the Vinoth is Sekar @ Rajasekar, who worked as Coolie in Chennai Railway Station and he used to involve in theft of cell phone in railway station and used to call the victims over phone falsely, even though, he did not kidnap the detainee. The said person was remanded into Judicial custody on 22.11.2017.

9. The preliminary issue in respect of the maintainability of the Habeas Corpus Petition is to be considered. In the said complaint preferred by the petitioner, there is no positive allegation or illegal detention of the detainee was established, except the fact that the detainee was missing.

10. This petition can be entertained only if the allegation of illegal detention is established or atleast a strong suspicion with proof are established before this Court. In the absence of any of these ingredients, no Habeas Corpus Petition can be entertained under Article 226 of the Constitution of India. It is necessary that violation of the fundamental rights enshrined in Part III of the Constitution of India must be established for the purpose of filing Habeas Corpus Petition. The Writ of Habeas Corpus is not to be issued as a matter of course. In the absence of any allegation that the detainee is held by any person by way of illegal custody a

writ of Habeas Corpus cannot be issued in respect of any and every missing person more so when no named person is alleged to be responsible for the illegal detention of the person for whose production before the Court writ is to be issued. Hence, man / woman missing case cannot be brought under the provision of the habeas corpus petition. This petition is lacking allegation of illegal detention or strong suspicion about any such illegal detention, which is a condition precedent for moving habeas corpus. The respondent police has registered a case under the regular provisions of the Indian Penal Code.

11. In view of the grievance made in the petition filed by the petitioner, the respondent police is directed to proceed with the case in the manner prescribed under the Code of Criminal Procedure and in view of the above said discussions that there is not even an iota of doubt in respect of any illegal detention, nor any such allegations are made in the petition and accordingly the present Habeas Corpus petition is dismissed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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TO

1. The Commissioner of Police,
Sirupooluva Patti,
Coimbatore.
2. The Inspector of Police,
Kaniyamuthur Police Station,
Coimbatore.
3. The Public Prosecutor,
Madras High Court,
Chennai.

H.C.P. No.1590 of 2017

SSV(CO)
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