

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2018

Coram

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

H.C.P.No.1757 of 2017

Kalaivani

... Petitioner

Vs.

1.The State rep.

The Commissioner of Police,
Greater Chennai,
E.V.K. Sampath Salai,
Vepery, Chennai 600 007.

2.The Assistant Commissioner of Police,
Thiruvotriyur Range,
Thiruvotriyur High Road,
Chennai 600 019.

3.The Inspector of Police,
H-8, Thiruvotriyur Police Station,
Thiruvotriyur,
Chennai 600 019.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondent police to securing the body of the detenu by name C.Rajan, son of Chandran, male aged about 28 years before this Court and set him at liberty.

For Petitioner : Mr.C.Jayaprakash
For Respondents : Mr.R.Ravichandran
Government Advocate

ORDER

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

The present Habeas Corpus Petition has been filed to secure the detenu namely, Mr.C.Rajan, son of Chandran, male aged about 28 years.

2.The factual matrix to be considered for the purpose of the present Habeas Corpus Petition is that the petitioner is none other than the wife of the detenu. The petitioner states

that she married the detenu, C.Rajan on 08.09.2016 at Sri Thiagarayasamy Thirukovil, Theradi, Thiruvotriyur, Chennai as per Hindu Rites and Customs. The petitioner and the detenu were living together in the matrimonial home at Door No.29, S.P.Koil Street, Sadayankuppam, Thiruvotriyur. Out of the wedlock, a female baby namely Megavarshini was born on 26.06.2017. After the child was born, the attitude of the detenu with the petitioner was not normal and he avoided coming to home and neglected the petitioner as well as the child. Subsequently, the petitioner came to understand that the detenu had an illegal affair with one lady, viz., Mohana, who was the neighbor of the detenu's residence. Thus, the petitioner was under the suspicion that the detenu had been illegally detained by the said Mohana, who was having illicit relationship with the husband of the petitioner.

3.The learned Government Advocate appearing on behalf of the respondent police in support of the additional Status report filed by P.R.Chidambaramurugesan, Inspector of Police, H8, Tiruvottriyur Police Station, Chennai, said that the respondent police had taken all sincere efforts. After conducting an elaborate investigation, a Special team was constituted, headed by one Kumar, Sub Inspector of Police. During the enquiry, they found that the detenu eloped with Mohana and they are living together at SIPCOT Industrial Area, Hosur and the detenu was working in TTK Cooker Company in SIPCOT Industrial Complex and the said Mohana is also working in Pallavi Super Market, Bagalur Road at Hosur. The Special team observed the behaviour of the detenu as well as the said Mohana for about two days. However, both of them were absconding.

4.The Sub Inspector of Police enquired the house owner of the detenu and came to know that the detenu and the said Mohana came to the house as a tenant in January 2018. The original certificates belonging to the detenu also were handed over to the house owner. Subsequent investigation revealed that the detenu and the said Mohana are working at Hosur. It is brought to the notice of this Court that the matrimonial dispute between the petitioner and detenu, due to the detenu's illegal intimacy with one Mohana, was prevailing prior to missing of the detenu. A compromise was arrived between the petitioner and the detenu and thereafter, the detenu went out from the matrimonial home.

5.This being the factum of the case, we are able to draw a factual inference that the relationship between the petitioner and the detenu was not in good terms. The police had also investigated the matter and found that the detenu and one Mohana are living together at Hosur and working there. Such being the factum of case, the element of illegal detention is not present in the present Habeas Corpus Petition. An element of illegal

detention is mandatory for the purpose of entertaining the Habeas Corpus Petition under Article 226 of the Constitution of India. It is a pre-condition that there must be an illegal detention or atleast a strong suspicion, so as to arrive a conclusion that there is possibility of the illegal detention. In the absence of any one of these illegal grounds, no Habeas Corpus Petition can be entertained under Article 226 of the Constitution of India. All other cases of man or woman missing are to be registered under the Indian Penal Code and the case should be proceeded in accordance with law.

6.This being the view of this Court, there is no reason what so ever to further continue the present Habeas Corpus Petition as the facts revealed that the husband of the petitioner, who is the detenu is now leading a life with one Mohana at Hosur.

7.Accordingly, this Habeas Corpus Petition stands dismissed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gsa/vsm

To

1.The Inspector of Police,
H-8, Thiruvotriyur Police Station,
Thiruvotriyur,
Chennai 600 019.

2.The Commissioner of Police,
Greater Chennai,
E.V.K. Sampath Salai,
Vepery, Chennai 600 007.

3.The Assistant Commissioner of Police,
Thiruvotriyur Range,
Thiruvotriyur High Road,
Chennai 600 019.

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

H.C.P.No.1757 of 2017

KS(CO)
GN(03/07/2018)