

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.05.2018

Coram

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

H.C.P.No.667 of 2017

Menaka

... Petitioner

Vs.

1.The Superintendent of Police
Kancheepuram District
Kancheepuram.

2.The Inspector of Police
H-2, Guduvancheri Police Station
Kancheepuram District.
(Crime No.267 of 2017)

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents herein to produce the body of the detenu by name R.Nagarajan, aged about 37 years before this Court and set him at liberty.

For Petitioner : Mr.L.Uthaya Kumar

For Respondents : Mr.R.Ravichandran
Govt. Advocate.

ORDER

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

The relief sought for in this Habeas Corpus Petition is for a direction to direct the respondents to produce the body of the detenu, by name R.Nagarajan, aged about 37 years, before this Court and set him at liberty.

2. The learned counsel appearing on behalf of the petitioner states that the detenu is her husband and was an employee of Hindu Mission Hospital, Tambaram as Ward Boy. The detenu was working in the said hospital for about 17 years and on 17.03.2017, the husband of the petitioner was on leave and did not attend his job. On the very same day, at about 5.00 p.m., the detenu left his home by stating that he is going to a shop. Thereafter, the detenu not returned back home till 11.00 p.m. Thus, the petitioner called her husband, through his mobile number, but the same was switched off. This made the petitioner to file a complaint and thereafter, to file the present Habeas Corpus Petition.

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3. We are of the considered opinion that there is no allegation of any illegal detention of the husband of the petitioner even in the affidavit filed in support of the Habeas Corpus Petition. This apart, it is a pre-condition for the

petitioner to establish an illegal detention for the purpose of entertaining the Habeas Corpus Petition. If any illegal detention is established or atleast a strong suspicion is made out, then this Court will be in a position to entertain the Habeas Corpus Petition.

4. The learned Government Advocate appearing on behalf of the respondents states that a case of “man missing” has already been registered and the police are investigating the same in accordance with law.

5. A status report filed by the first respondent, Superintendent of Police, Kanchipuram District, Kanchipuram, narrates the investigation conducted by the police. Paragraph Nos.6 and 7 of the status report is extracted hereunder:

“6.The petitioner has given a clue about her husband that her husband's friends one Mr.Antony and Soloman have seen her husband at Velankanni festival, Nagapattinam District on 29.08.2017 and called his name in the heavy crowd, but on seeing them evaded their response and wantonly mingled in the heave crowd there. The 2nd respondent has called for the said Antony and Solaman and have obtained their statements on 12.09.2017.

7. Further, it is submitted that the 2nd respondent has examined one Mr.Jothi, close friend of the said detenu on 18.09.2017 and he has revealed that the detenu behaves like “Transgender” and unusually hugged and kissed him. He used to

take alcohol frequently and he had stated to his friend Mr.Jothi that he has no sexual feelings with his wife and not indulged in sexual affairs with his wife so far and used alcohol to avoid sleepless nights and also he was least interested in the married life.”

6. The learned Government Advocate brought to the notice of this Court that all possible investigations were conducted and even in one occasion, the police could able to say that the close friend of the detenu on 18.09.2017 has stated that the detenu behaves like a “Transgender” and behaved in an unusual manner.

7. Such being the statement made by the close friend of the detenu, we are of the considered opinion that there is no such illegal detention is established even during the investigation by the respondent police. In respect of entertaining the Habeas Corpus Petition, and in the absence of any illegal detention, the Honourable Apex Court of India settled the legal principles in the case of ***Sulochana Bai Vs. State of M.P. And others*** and held as follows:

“4. The writ of habeas corpus as had been called by Blackstone “the great and efficacious writ in all manner of illegal confinement”. The Apex Court in the case of Kanu Sanyal v. District Magistrate, traced the immemorial antiquity of the writ and referred to number of English decisions and opined that there can be no doubt that in enacting Article 32 (2) the

Constitution makers meant to give to person illegally restrained of his liberty the same kind of remedy, fashioned and developed over the years, which his counterpart enjoyed in England and United States. Their Lordships further proceeded to state that while dealing with an application for the writ of habeas corpus under Article 32 the Supreme Court may not require the body of the person detained to be brought before the Court. The production of the body of the person detained is not essential to the jurisdiction of the Supreme Court to deal with the application. Their Lordships expressed if the detention is found to be unlawful, an order to release him is to be passed forthwith.

5. In *Prem Shanker Shukla v. Delhi Administration*, the Apex Court has ruled thus:

“The raw history of human bondage and the roots of the habeas corpus writ enlighten the wise exercise of constitutional power in enlarging the person of men in unlawful detention. No longer is this liberating writ trammelled by the traditional limits of English vintage; for, our founding fathers exceeded the inspiration of the prerogative writs by phrasing the power in larger diction. That is why, in India, as in the similar jurisdiction in America, the broader horizons of habeas corpus spread out, beyond the orbit of release from illegal custody, into every trauma and torture on persons in legal custody, if the cruelty is contrary to law, degrades human dignity or defiles his personhood to a degree that violates Articles 21, 14 and 19 enlivened by the preamble.”

6. In *Additional Secretary to the Government of India v. Alka Subhash Gadia* 1992 Suppl. (1) SCC 496, it has been held that the Courts must insist that the aggrieved person must allow the due operation and implementation of the concerned law and exhaust the remedy provided by it before approaching the High Court to invoke the discretionary, extraordinary and equitable jurisdiction which has to be very sparingly used. Their Lordships laid down certain guidelines where the Court should interfere prior to execution of order of detention.

7. In *Sayed Taher Bqwamiya v. Joint Secretary to the*

Government of India and Ors. , the said principle was reiterated.

8. *In Mohd. Ikrarn Hussain v. State of U.P. , it has been held as under:*

“Exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of Habeas Corpus is probably never used by a husband to regain his wife and the alternative remedy under Section 100 of the Code of Criminal Procedure is always used. Then there is the remedy of a civil suit for restitution of conjugal rights. Husbands take recourse to the latter when the detention does not amount to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of fact that first to be established. This is because the writ of habeas corpus is festinum remedium and the power can only be exercise in a clear case.”

9. *In this context a Division Bench of the Kerala High Court in T. Ramachandran v. V.K. Kuttan and Ors. 1975 Cr.LJ 1531, it has been held that the issue of writ of habeas corpus would necessarily pre-supposes the factum of wrongful confinement.*

10. *In the case of Dr. Mrs. Veena Kapoor v. Varinder Kumar Kapoor , the Apex Court while dealing with the custody of a minor child in habeas corpus petition expressed the opinion as under:*

“3. It is difficult for us in this habeas corpus petition to take evidence without which the question as to that is in the interest of the child cannot be satisfactorily be determined. We, therefore, direct that the learned District Judge, Chandigarh, will make a report to us before 23rd of this month on the question as to whether the custody of the child should be handed over to the petitioner-mother, taking into consideration the interest of the minor. The learned Judge will give liberty to the parties to adduce evidence on the question in issue. The learned District Judge may either take up the matter himself or assign it to an Additional District Judge, if there is any at Chandigarh.”

11. *In the case of State of Bihar v. Kameshwar Prasad Verma , it has been held that habeas corpus is a writ in the nature of order calling upon the person who was detained by another to produce the latter before the Court so that the Court can know on what ground he has been confined and set him free*

if there is no legal jurisdiction for imprisonment. In Anwar v. State of J and K , it has been held that it must appear to the Court that the detention is in violation of the procedure established by law.”

8. Applying the above legal principles settled by the Honourable Apex Court of India, we are of the opinion that the petitioner in the present petition on hand failed to establish any illegal detention and even during the investigation by the police, no such illegal detention is established. Thus, the respondents are directed to proceed with the “man missing” case already registered in accordance with law.

9. In this view of the matter, no further adjudication is required in respect of the grounds raised in this Habeas Corpus Petition. Accordingly, this Habeas Corpus Petition stand dismissed.

(S.M.S., J.)

(S.R.T., J.)

04.05.2018

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S.M.SUBRAMANIAM, J.
and
S.RAMATHILAGAM, J.

vsm

To

- 1.The Superintendent of Police
Kancheepuram District
Kancheepuram.
- 2.The Inspector of Police
H-2, Guduvancheri Police Station
Kancheepuram District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai.



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