

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.350 of 2019

S.Lelin ... Petitioner/Father of detainee

-vs-

1. Inspector of Police,
Peralam Police Station,
Thiruvarur District.

2. The Superintendent of Police,
O/o. Superintendent of Police,
Thiruvarur.

3. S.Sivakumar ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in Crime No.72 of 2019 dated 27.01.2019 on the file of the first respondent and direct the respondents herein to produce the body of petitioner daughter, namely Arthi, aged about 16 years, who are in the illegal custody of the 3rd respondent and handover to the petitioner.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondents: Mr.C.Iyyapparaj,
Additional Public Prosecutor

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ORDER

[Order of the Court was made by M.Sathyanarayanan, J.]

The petitioner is the father of the detainee, namely Arthi, aged about 16 years, who was born on 12.10.2003 and she said to have developed acquaintance with the third respondent and enticed by his sweet words, she went out of the parental home and went with the third respondent on 19.01.2019 on the pretext

of attending special class in the School, but she did not return. Despite best efforts made by the parents of the detainee, she could not be traced and therefore, the father of the detainee lodged a complaint based on which, the first respondent police has registered a case in Crime No.72 of 2019 on 27.01.2019 for "Girl Missing".

2. The detainee has been secured and produced before this Court and on enquiry, she would state that the third respondent, on the pretext of taking her to the beach at Velankanni, took her to Thiruppur and confined her and thereafter, she was secured by the first respondent and produced before this Court. She would further state that she is willing to pursue her Higher Secondary Course and want to become a Medical Practitioner and she wish to remain with her parents.

3. The parents of the detainee were also enquired and they would state that they would not nag or remind the detainee about the past and they are willing to educate the detainee to reach her full potential in academics.

4. Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the third respondent was also secured and arrested and the Sections were altered to Sections 6 and 5(1) of the Prevention of Children from Sexual Offences Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006 and the detainee is now in family way, as she is six weeks pregnant.

5. The learned counsel appearing for the petitioner would submit that in the light of the Medical Termination of Pregnancy Act, 1971 [Central Act No.34 of 1971], this Court may pass appropriate orders for terminating the unwanted pregnancy of the detainee/minor girl, who is aged about 16 years.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. The detainee, who is produced before this Court, has expressed her willingness to remain in the custody of her parents, who have also gave assurance that she will be given good education, so as to enable her to pursue her academic carrier.

8. Insofar as the plea made by the learned counsel appearing for the petitioner as to the termination of pregnancy, it is relevant to extract Section 3 of the Medical Termination of Pregnancy Act, 1971:

"3. When Pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical

practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that,-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in Cl.(a), no pregnancy shall be terminated except with the consent of the pregnant woman."

9. In the light of the fact that the detenue/minor girl has been secured and she also expressed her willingness to go along with her parents, her custody is handed over to the parents, who are present before this Court. As regards the plea made by the

learned counsel appearing for the petitioner as to termination of pregnancy, the first respondent police, subject to the provisions of the Medical Termination of Pregnancy Act, 1971, shall take appropriate steps, as expeditiously as possible.

10. This Habeas Corpus Petition is disposed of, subject to above observations.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. Inspector of Police,
Peralam Police Station,
Thiruvavur District.

2. The Superintendent of Police,
O/o. Superintendent of Police,
Thiruvavur.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Mohamed Saifulla, Advocate, S.R.No. 34953

H.C.P.No.350 of 2019

SR(CO)
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