

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
H.C.P.No.451/2019

N.Akhbar

.. Petitioner

vs.

1.The Commissioner of Police
Salem-7.

2.The Inspector of Police
Hasthampatti Police Station
Hasthampatti, Salem-7.

3.Shajahan

4.Sahul

.. Respondents

**RR3 and 4 are impleaded as per the order
in HCP.No.451/2019 dated 01.03.2019.

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the body of the petitioner brother Mohammed Jakria aged about 56 years before this Court and set him at liberty.

For Petitioner... Mr.Rajakumar

For RR 1 & 2 .. Mr.C.Iyyappa Raj, APP

ORDER

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

The petitioner is the brother of the detenu Mohammed Jakria, who is aged about 56 years and according to the petitioner, there are disputes pertain to immovable property at Hasthampatti, Salem Town and this regard, a Partition Suit has also been filed by one of the petitioner's and detenu's brother, viz., Shajahan, the 3rd respondent herein. It is the specific case of the petitioner that on account of the pendency of the dispute, Shajahan had forcibly taken away the detenu / his brother, without his will or consent. In this regard, the petitioner has also lodged a complaint on 07.02.2019 on the file of the 2nd respondent herein and despite receipt and acknowledgment, no action has been taken and hence, came forward

to file the present habeas corpus petition.

2 When the matter was listed on 15.03.2019, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor accepted notice on behalf of the respondents 1 and 2 and sought time to get instructions and accordingly, the matter is listed today.

3 The learned Additional Public Prosecutor, on instructions, would submit that admittedly, a suit for partition in OS.No.443/2010 is pending on the file of the Court of District Munsif, at Salem, instituted by one Noorjahan, Benazir, Rosnizahaar and Shajahan, against Abdul Rahman and 15 others and the 13th defendant is none other than the detenu herein. It is the further submission of the learned Additional Public Prosecutor that originally CSR.No.95/2019 was assigned in respect of the complaint given by the petitioner and thereafter, it was converted as FIR in Crime No.71/2019 for the commission of the offence u/s.365 IPC and in the said FIR, the close relatives have been arrayed as accused. The learned Additional Public Prosecutor would submit on instructions that the detenu himself has been voluntarily hiding himself and further that the petitioner is not also extending his cooperation to the 2nd respondent police to carry out the investigation.

4 The Court has considered the rival submission and also perused the materials placed before it.

5 In the light of the fact that the detenu is a major aged about 56 years and with regard to his alleged missing, FIR is also registered and the matter is pending investigation, this Court is of the considered view that no purpose would be served by keeping this petition pending till tracing of the detenu. The 2nd respondent police is directed to carry out the investigation in a fair, proper and impartial manner and as and when the detenu is traced, he shall be produced before the Court of Judicial Magistrate No.3, Salem, for passing appropriate orders as to his liberty. The 2nd respondent shall also make every endeavour to expedite the investigation and file the Final Report as expeditiously as possible.

6 The Habeas Corpus Petition stands disposed of with the above observations.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Commissioner of Police
Salem-7.

2.The Inspector of Police
Hasthampatti Police Station
Hasthampatti, Salem-7.

3.The Public Prosecutor,
Madras High Court, Madras.

+1 cc to Mr.S.Rajakumar, Advocate, Sr.No. 29301

CSL/07.05.2019

H.C.P.No.451/2019



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