

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.No.3003 of 2018

B.Nalini @ Bakkiyam
W/o.Bruno Charles

... Petitioner

-Vs-

- 1.The Senior Superintendent of Police,
Orleanpet Police Complex,
Puducherry.
- 2.The State by
The Station House Officer,
Odiansalai Police Station,
Puducherry.
Crime No.76 of 2017
- 3.The Chairperson,
The Child Welfare Committee,
Ariyankuppam,
Puducherry.
- 4.The Co-ordinator,
Child Line 1098 - Puducherry,
Collaborative Organization
Pondicherry Multipurpose Social Society (PMSSS),
81, Laporate Street,
Puducherry - 605 001.
- 5.Kirubalaiya Home,
Korukanmedu,
Thavalakuppam,
Puducherry.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing respondent police to produce the Kavya @ Beatrice, aged 17 years, before this Court and hand over to the petitioner.

For Petitioner : Mr.R.Sreedhar

For Respondents: Mr.V.Balamurugan
Additional Public Prosecutor
(Pondicherry)
[R1 & R2]

O R D E R

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J]

The Writ of Habeas Corpus has been filed to direct the fifth respondent viz., Kirubalaiya Home, Korukanmedu, Thavalakuppam, Puducherry, to produce the daughter of petitioner viz., Kavya @ Beatrice, aged 17 years, before this Court.

2. The learned Counsel for the petitioner would submit that the petitioner is the mother of the detainee, minor Kavya @ Beatrice, born on 20.09.2001. He would submit that in respect of an allegation that the detainee was subjected to physical abuse, a case was registered by the 2nd respondent Police in Cr.No.76 of 2017, on the file of the Special Court. He would submit that earlier, the petitioner has filed HCP.No.388 of 2018 before this Court and this Court, by order dated, 13.03.2018, had closed the case, on the followings grounds:-

"3. Both affirm that the minor girl, who has been abused and a case stands registered under protection of children from sexual offences Act against the offender. Both counsel informed that in the int of the detainee/minor girl, it would be appropriate that she be required to be kept at the fifth respondent's Home and third respondent/Child Welfare Committee, is monitoring her welfare. Learned Counsel for the seventh Respondent had further submitted that detainee is now attending classes for X standard and has also been taught tailoring. It has been further submitted that the petitioner/mother of the detainee shares residence with the abuser of the detainee/minor girl.

4. Given the above submission, this Court is not able to accept the submissions of learned counsel for Petitioner that the detainee/ minor girl would be safe under the care and custody of the petitioner/ mother of the detainee and that the seventh respondent is levelling false charges against the petitioner since he and his wife/ petitioner have for long been separated.

5. In the circumstance, this Habeas Corpus Petition shall stand closed. The detainee/minor girl shall continue to be in the custody of fifth respondent/Home and the third respondent/child Welfare Committee is required to monitor the welfare of the child and to act in keeping with The Juvenile Justice (Care and Protection of Children) Act."

3. The learned Counsel for the Petitioner would submit that at the time of the earlier HCP, investigation was pending and thereby, this Court was pleased to pass such an order. He would submit that pursuant to the earlier order, the girl was accommodated in the 5th respondent Home.

4. The learned Counsel for the petitioner would further submit that the investigating has been completed and the case has been taken up for trial in Spl.SC.No.23 of 2017 and the detainee had been examined before the Trial Court on 17.07.2018 and that she had deposed that she does not know the alleged offender and thereby, she has not supported the case of the Prosecution. After the evidence has been recorded, the petitioner had made a representation on 16.10.2018 to the Chairperson of the Child Welfare Commission to hand over the custody of the detainee, Minor Kavya @ Beatrice, to her.

5. The learned Counsel for the petitioner would further submit that the detainee has also expressed her willingness to join the Petitioner and as a mother, the petitioner is entitled to the custody of the detainee and he would pray that the custody of the minor be handed over to the Petitioner.

6. This Court, on the earlier hearing date, directed the 5th Respondent to produce the detainee before this Court and in keeping with the directions of this Court, the detainee has been produced before this Court today.

7. Heard the learned Public Prosecutor, the 3rd Respondent, Chairperson, Child Welfare Committee and the Person in charge of the 5th Respondent Home.

8. The learned Public Prosecutor would submit that examination of the detainee before the Trial Court has been completed and she has not supported the case of the prosecution. The learned Public Prosecutor also brought to the notice of this Court that the mother of the Petitioner/maternal grand mother of the detainee is also present before this Court.

9. We enquired the Petitioner and the detinue. The detinue has expressed her willingness to go along with the mother. We also enquired the mother of the petitioner, who is the maternal grand mother of the detinue. She informed that right since the birth of the detinue, both the Petitioner and the minor child, were abandoned by the husband of the Petitioner and that she has been taking care of them and that the detinue is being under her care right from the age one and that she has also expressed that she will continue to do her best to ensure the wellbeing of the petitioner as well as her grand daughter, who is the detinue herein.

10. In view of the afore stated position, we direct the custody of the detinue Kavya @ Beatrice to be handed over in the hands of petitioner, her mother, after completion of formalities in the course of the day. The District Social Welfare Officer, preferably a female officer, is directed to visit the petitioner once in two weeks towards assuring the well being of the minor girl. The District Social Welfare Officer shall do so till the detinue attains the age of 18 i.e. up to 20.09.2019.

11. This Habeas Corpus Petition, accordingly, is disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1.The Senior Superintendent of Police,
Orleanpet Police Complex,
Puducherry.

2.The Station House Officer,
Odiansalai Police Station,
Puducherry.
Crime No.76 of 2017

3.The Chairperson,
The Child Welfare Committee,
Ariyankuppam, Puducherry.

4.The Co-ordinator,
Child Line 1098 - Puducherry,
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81, Laporate Street,
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5.Kirubalaiya Home,
Korukanmedu,
Thavalakuppam,
Puducherry.

6.The Public Prosecutor,
Pondicherry.

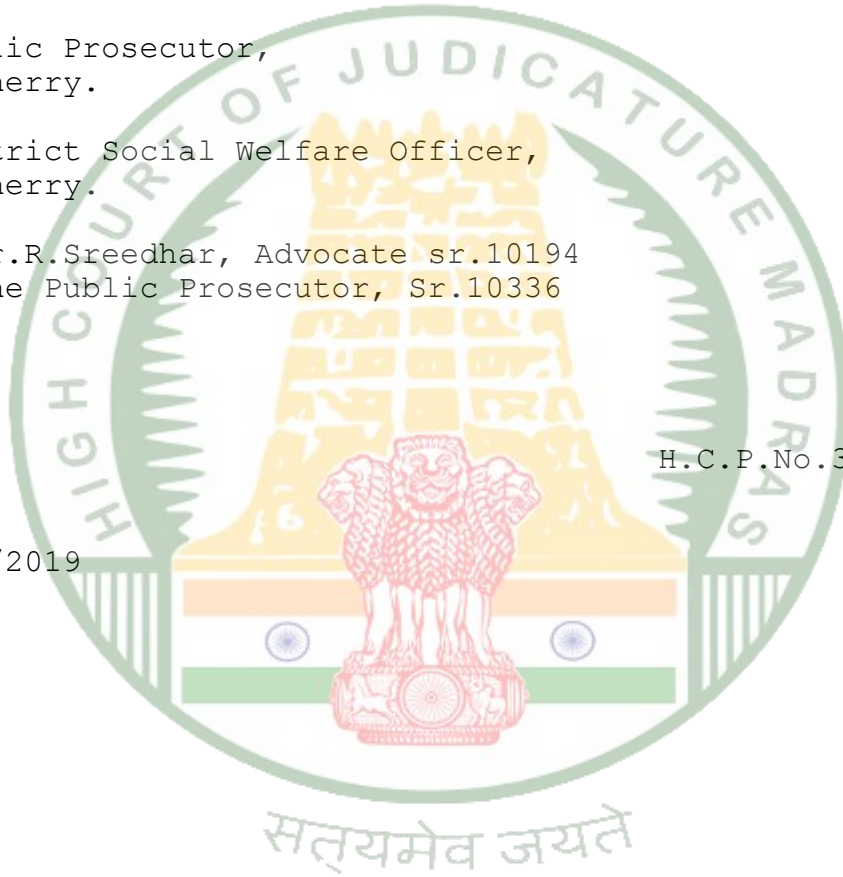
7.The District Social Welfare Officer,
Pondicherry.

+lcc to Mr.R.Sreedhar, Advocate sr.10194

+lcc to the Public Prosecutor, Sr.10336

H.C.P.No.3003 of 2018

srg 26/02/2019



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