



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.06.2019
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.335 of 2019

Jothimani ... Petitioner
Vs.

1. The Superintendent of Police,
Sivagangai District, Sivagangai.

2. The Inspector of Police,
Sakkottai Police Station,
Sakkottai, Sivagangai District.

3. Sathish ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to direct the respondents to secure the detenu (the petitioner's daughter) from the illegal custody of the third respondent and produce the body or person of the petitioner's daughter namely Subharanjani, D/o Pandi, aged about 16 years before this Court and entrust her custody to the petitioner.

For Petitioner : Mr.P.Aju Tagore
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor
for R.1 and R.2

ORDER

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

The petitioner is the mother of the minor detenu, viz., Subharanjani, aged about 16 years (date of birth is 13.05.2002) and alleging her illegal custody and detention in the hands of the third respondent, came forward to file this Habeas Corpus Petition.

2. This Habeas Corpus Petition was entertained on 16.04.2019. A mention was made by the learned Additional Public Prosecutor on the ground that the detenu has been secured and accordingly, the matter is listed today.

3. The detenu is present along with her mother / petitioner and is called for enquiry and she would state that on her own volition, she went with the third respondent and subsequently, got



married and both of them are living as husband and wife and the occupation of the third respondent is sculptor.

4. She would further state that she is willing to go with her mother / petitioner and she is prepared to wait till she attains the age of 18 years and would state that she would live only with the third respondent.

5. The mother of the detenu is present before this Court and would state that she would take care of the well being and welfare of her daughter.

6. The learned Additional Public Prosecutor appearing for the State would submit that subsequent to the securing of the detenu, a case was initially registered for the commission of offence under Section 366(A) I.P.C., in Cr.No.92 of 2019 and it has been altered to Section 366(A) I.P.C., and Section 5(j)(ii) and 6 of the Protection of Children from Sexual Offences Act, 2012 and the third respondent has also been arrested and now he is in judicial custody. He would further submit that the medical examination of the detenu reveals the pregnancy of the detenu by eight weeks.

7. This Court, after hearing the response of the learned Additional Public Prosecutor, also asked the detenu as to whether she is willing to deliver the child and she would state that she is willing to get abort.

8. It is relevant to extract Section 3 of the Medical Termination of Pregnancy Act, 1971 (Central Act 34 of 1971), which is as follows:

"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

(1) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of



grave injury to her 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.

(3) In determining whether the continuance of a 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 (mentally ill person), shall be terminated except with the consent in writing of her guardian.

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

9. The mother of the detenu would also state that she has no objection for aborting the fetus.

10. In the light of the above facts and circumstances, the custody of the detenu is handed over to the mother / petitioner and if the detenu as well as her mother expressed no objection for abortion, the second respondent shall take necessary steps in terms of Section 3 of the Medical Termination of Pregnancy Act, 1971 (Central Act 34 of 1971) accordingly. It is also made clear that since a case has already been registered against the third respondent under the provisions of the Protection of Children from Sexual Offences Act, 2012 also, in the event of abortion, the fetus shall be preserved for the purpose of evidence in the said case. Accordingly, the Habeas Corpus Petition is disposed of.

sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS)

To

1. The Superintendent of Police,
Sivagangai District, Sivagangai.
2. The Inspector of Police,
Sakkottai Police Station,
Sakkottai, Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



+1 CC to Mr.S.SABBANI KARBURAJOTHI, Advocate (SR-68090[F] dated
12/06/2019)

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10.06.2019

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