



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2019

CORAM:

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

H.C.P (MD) No.265 of 2019

Kalidoss

... Petitioner

Vs.

- 1.The Superintendent of Police,
Sivagangai District,
Sivagangai.
- 2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
- 3.Muthu Selvam
- 4.Deva

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, directing the respondents to produce the body of Minor, Kavitha (aged 15 years) D/o. Kalidoss before this Hon'ble Court and to handover the custody to the Petitioner.

For Petitioner : Mr.N.Jeyaram Sidharth

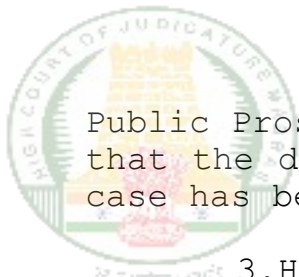
For Respondents 1 & 2 : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

The petitioner is the father of the minor detinue viz., Kavitha, aged about 15 years [31.10.2003] and alleging that she has been kidnapped and kept under the illegal custody and detention at the hands of the respondents 3 and 4, came forward to file this Habeas Corpus Petition and it was entertained on 08.04.2019.

2.A mention was made by Mr.K.Dinesh Babu, learned Additional
<https://hcservices.ecourts.gov.in/hcservices/>



Public Prosecutor appearing for the respondents 1 & 2 for the reason that the detinue has been traced and produced and accordingly, this case has been taken up for hearing out of turn.

3. Heard the learned counsel appearing for the petitioner and this Court has also interacted with the detinue and she would state that she has been tortured by the respondents 3 and 4 and she has been forcibly taken without her will or consent and the third respondent has also physically abused her and now she is willing to go along with her parents, who are also present before this Court. Hence, her custody is handed over to her parents.

4. The learned Additional Public Prosecutor, appearing for the State on instructions would submit that the medical examination of the detinue has been done and she is 13 weeks pregnant and also assured that the investigation of the case in Crime No.145 of 2019 would be conducted in proper and effective manner after altering the Sections by 5 (j) (1) and 6 of the Protection of Children from Sexual Offences Act, 2012.

5. The detinue also expressed her consent to undergo termination of pregnancy and the parents of the detinue, who are also present before this Court are also willing for that. 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."

In view of the consent given by the detinue as well as her parents, the second respondent is directed to take immediate and necessary steps in terms of the above cited provision and do the needful at the earliest and foetus shall be preserved for further proceedings.



6.This Habeas Corpus Petition is disposed of accordingly.

Sd/-

Assistant Registrar

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// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Superintendent of Police,
Sivagangai District,
Sivagangai.
- 2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
- 3.Dean,
Government Medical College Hospital,
Sivagangai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No.265 of 2019
21.08.2019

sj

JMN(28.08.2019) 3P : 5C