

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.245 of 2020

K.Murugesan

... Petitioner

Vs.

1. The Superintendent of Police,
District Police Head Quarters,
Salem, Salem District.

2. The Inspector of Police,
Athur Police Station,
Salem District.

3. S.Sharukhan

4. A.Imthiyas Khan

... Respondents

Prayer:Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus to direct the second respondent to produce the body of the petitioner's daughter, namely M.Amirtha Varshini, aged 18 years, before this Court from the custody of the third and fourth respondents and set her at liberty.

For petitioner : Mr.V.Rajesh

For respondents: Mr.R.Prathap Kumar,
Addl.P.P. for RR-1 and 2

ORDER

(The Order of the Court was made by R.Subbiah,J)

This Habeas Corpus Petition is filed by the petitioner praying for issuance of a Writ of Habeas Corpus to direct the second respondent to produce the body of the petitioner's daughter, namely M.Amirtha Varshini, aged 18 years, before this Court from the custody of the third and fourth respondents and set her at liberty.

2. It is the case of the petitioner that he is blessed with two daughters, namely Ms.Amirtha Varshini, aged about 18 years and Ms.Akshara, aged about 14 years and one son, namely Master Bhuvan Sripathy, aged about 8 years. The detainee/elder daughter of the petitioner is studying 11th Standard in SRV Girls Higher Secondary School, Rasipuram and is staying in the school hostel. On 17.12.2019, at about 9 p.m., the school authorities contacted the petitioner over phone and informed that the petitioner's daughter/detainee was missing from the hostel from 6.30 p.m. on that day. On 18.12.2019 morning, the petitioner approached the school authorities and on enquiry, the petitioner came to know that one Mr.Sharukhan, son of Shajahan, kidnapped the detainee and she is under his custody. Hence, the petitioner, along with school authorities, lodged a complaint to the Inspector of Police, Rasipuram Police Station, in which enquiry was conducted in C.S.R.No.388 of 2019.

3. It is the further case of the petitioner that on 20.12.2019, the petitioner was summoned by the Inspector of Police of Rasipuram Police Station and hence, the petitioner, along with his wife, went to the Police Station, where he found persons including Mr.Sharukhan, his father Mr.Shajahan and others were present. The petitioner was informed that they have converted the petitioner's daughter/detainee as Muslim and conducted 'Nikkah' of her with the said Sharukhan. They threatened the petitioner and his wife to withdraw the said complaint. The petitioner objected to the same and the persons present in the Police Station threatened the petitioner and his wife with dire consequences. The petitioner met the Inspector of Police, Rasipuram Police Station and complained about the said threat meted out to him in the Police Station premises. When the Inspector of Police conducted enquiry, it came to light that the said Sharukhan did not even attain the age of marriage and when the Inspector of Police informed that the marriage is illegal and FIR will be registered against the said Sharukhan and his aides, the fourth respondent claimed himself as a powerful Advocate of that locality, intervened claiming that he is the Advocate of the petitioner's daughter Amirtha Varshini studying XI Std. and sought for the custody of the petitioner's daughter claiming that she is major. Hence, on 23.12.2019, the petitioner gave a representation to the Superintendent of Police, Namakkal District, requesting him to transfer the investigation officer in CSR.No.388 of 2019 on the file of the Rasipuram Police Station and rescue his daughter to the petitioner. On that complaint, FIR in Crime No.741 of 2019, dated 23.12.2019, was registered as "woman missing". On 07.01.2020, the petitioner's daughter/detainee was produced before the learned Judicial Magistrate, Paramathi. The petitioner learnt that the respondents 3 and 4 are taking steps to send the petitioner's daughter to foreign country. If the petitioner's daughter is

sent to foreign country, there is every possibility of danger to her life. Hence, after lodging the complaint to the Athur Police Station on 12.01.2020 by the petitioner, the second respondent conducted enquiry in CSR.No.15 of 2020 and the respondents 3 and 4 did not co-operate for the enquiry and in their presence, the petitioner's daughter informed him of her willingness to go with them. Thereafter, the petitioner has filed the present Habeas Corpus Petition for the relief stated supra.

4. When the Habeas Corpus Petition is taken up for consideration today, the learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that the detinue was produced earlier before the learned Judicial Magistrate, Rasipuram (in-charge of Judicial Magistrate, Paramathi) and in this regard, he produced the copy of the order date 07.01.2020 in C.M.P.No.34 of 2020, passed by the said Judicial Magistrate, from which, it is seen that the detinue had completed 18 years of age and she was then 18 years and 4 months. Before the said Magistrate, the detinue expressed her unwillingness to go along with her father.

5. Thus, it is submitted by the learned Additional Public Prosecutor that there is no illegal detention of the detinue. However, the learned counsel for the petitioner insisted to produce the detinue before this Court. When already an order had been passed by the learned Magistrate holding that she is above 18 years of age, this Court finds that there is no illegal custody of the detinue and moreover, before the Magistrate, she had expressed her unwillingness to go along with her father. Hence, we are of the opinion that it is absolutely not necessary to direct the respondent-Police to produce the detinue before this Court. We find that there is no illegal detention of the detinue. Hence, this Habeas Corpus Petition is not maintainable and the same is accordingly dismissed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

WEB COPY
Sub Assistant Registrar

To

1.The Superintendent of Police,
District Police Head Quarters,
Salem, Salem District.

2.The Inspector of Police,
Athur Police Station,
Salem District.

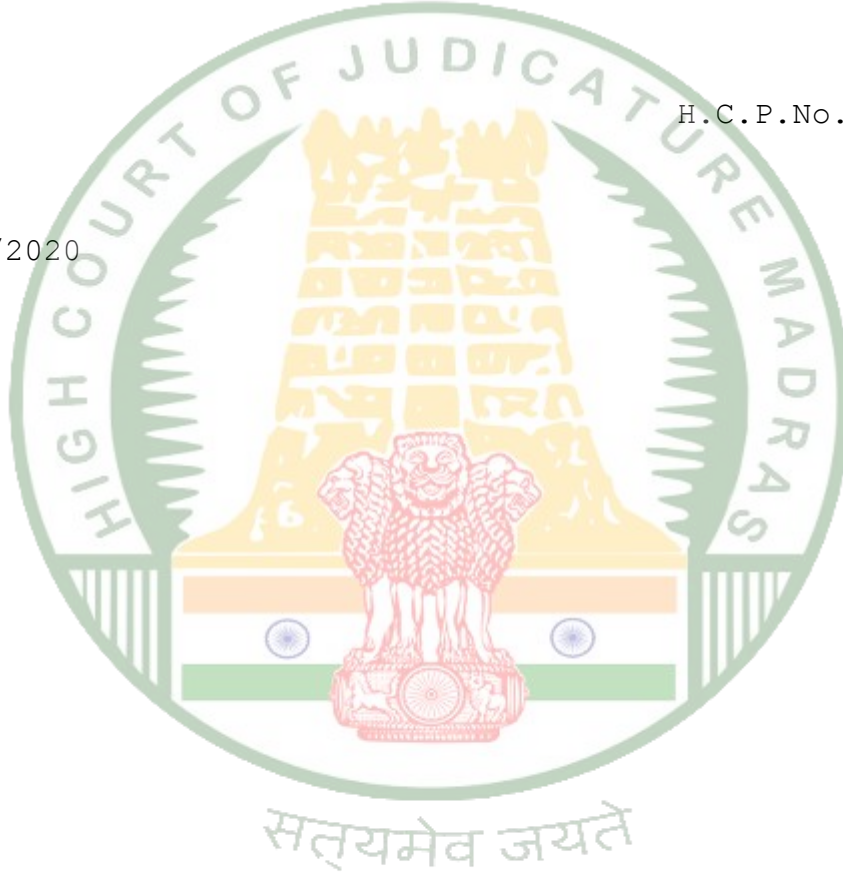
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison, Salem.

+1cc to Mr.V.Rajesh, Advocate Sr.9239

H.C.P.No.245 of 2020

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srg 03/03/2020



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