



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Original Jurisdiction)

Thursday, the Twentieth day of February Two Thousand and Twenty

PRESENT

The Hon'ble Mr. Justice T. RAJA

AND

The Hon'ble Mr Justice B. PUGALENDHI

HCP (MD) .No.1312 of 2019

M. Manjula ... Petitioner / Mother of the detenu

Vs

1 The Superintendent of Police,
Tanjavur, Tanjavur District

2 The Inspector of Police, Peravurani Police Station,
Tanjavur District. (Cr No.211/2019)

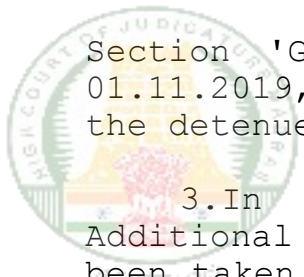
3 Arul Victor ... Respondents

Prayer :- Habeas Corpus petition is filed Under Article 226 of the Constitution of India, To directing the respondents 1 and 2 herein to secure the detenu namely M. Janani daughter of N. Muthusamy, aged about 17 years and produce the body of the detenu before this Honourable Court.

ORDER:- This Habeas Corpus Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. R. J. Karthik, Advocate for the Petitioner and of Mr. K. Dinesh Babu, Additional Public Prosecutor on behalf of the respondents 1 & 2, this Court made the following order:

The mother of the detenu has come to this Court seeking for issuance of a Writ of Habeas Corpus, directing the respondents 1 and 2 herein to secure the detenu viz., M. Janani, aged about 17 years, daughter of N. Muthusamy and produce the detenu or her body before this Court and handover her to the petitioner.

2. Learned counsel appearing for the petitioner would submit that the detenu, being a minor, aged about 17 years, while pursuing her first year U.G. Course in a College, was found missing from 16.10.2019. Therefore, a complaint was given and based on which, a case in Cr. No. 211 of 2019, on the file of the Peravurani Police Station, Thanjavur District, was registered on 01.11.2019 under



Section 'Girl Missing'. Though a case has been registered on 01.11.2019, till date, no improvement has been made for tracing out the detainee.

3. In response to the above said submission, the learned Additional Public Prosecutor would submit that enough steps have been taken for tracing out the detainee and the parents of the third respondent were already arrested and remanded to judicial custody.

4. We are unable to agree with the oversteps taken by the respondent police for arresting the innocent parents of the third respondent. We wish to make it clear that, in a matter like this, when the respondent police are entitled to conduct a proper enquiry inviting the parents of the boy, they should act in accordance with law while making any such arrest of the parents, who are no way connected to the elopement. We do not find any justification in this case to arrest and remand the innocent parents of the third respondent, whom, in our considered opinion, are innocent, but unfortunately became the victim of circumstances. Arrest cannot be construed as a mode of investigation and the respondent police cannot take the weapon of arrest at the first instance and for no reason, going to the extent of arresting the innocent parents of the boy.

5. The Hon'ble Apex Court while considering the serious and harmful effect of routine arrest made against innocent citizens has discounted the routine arrests and while considering Section 41 of Cr.P.C. in **Arnesh Kumar v. State of Bihar [(2014) 8 SCC 273]** has pointed out the consequences that would follow after the arrest of innocent persons and has cautioned the police authorities not to make arrest unnecessarily. In paragraph 11 of **Arnesh Kumar's case** (supra), the Hon'ble Apex Court issued the following directions:-

'11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;



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11.4.The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5.The decision not to arrest an accused, be forwarded to Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for reasons to be recorded in writing;

11.6.Notice of appearance in terms of Section 41-A Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7.Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before the High Court having territorial jurisdiction.

11.8.Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.''

6.Mr.K.Dinesh Babu, learned Additional Public Prosecutor, has also submitted that they have already obtained bail. In future, they should not unnecessarily arrest and remand the innocent parents of the boy in a girl missing case and they shall conduct proper investigation to trace out the missing girl only.

7.Mr.K.Dinesh Babu, learned Additional Public Prosecutor has sought for two weeks time to find out the whereabouts of the missing girl.

Therefore, post the matter after two weeks.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1. The Superintendent of Police
Tanjavur
Tanjavur District

2. The Inspector of Police
Peravurani Police Station
Tanjavur District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, (2 - Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai
(to list the matter after 2 weeks)

ORDER DATED : 20/02/2020

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ORDER

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HCP(MD) . No.1312 of 2019

Giving direction and etc.
as stated within.

SDS (15.07.2020) 4P-6C