

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

Coram

The Hon'ble Mr. Justice P.N.PRAKASH
and
The Hon'ble Mr. Justice V.SIVAGNANAM

H.C.P. No.64 of 2021

Vikram

.. Petitioner

Vs.

1.State represented by
The Inspector of Police,
Vettavalam Police Station,
Keezhpennathur Taluk,
Thiruvannamalai District.
(Crime No.1331 of 2020)

2.The President,
Nesam home for Women and Old aged Persons,
Thiruvannamalai Town,
Thiruvannamalai District.

3.Lakshminarayanan ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus directing the respondents herein to produce the body of the petitioner's legally wedded wife Ayulusha, aged about 18 years, now confined at 2nd respondent home, before this Court and set her at liberty forthwith.

For Petitioner : Mr.A.Ramalingam

For R1 : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

This habeas corpus petition has been filed seeking to direct the respondents herein to produce the body of the petitioner's legally wedded wife Ayulusha, aged about 18 years, now confined at 2nd respondent home, before this Court and set her at liberty forthwith.

2. It is the case of the petitioner that he hails from Adi-Dravidar Community and is aged about twenty one years; he and Ayulusha, D/o.Lakshminarayanan, third respondent herein, fell in love with each other and eloped, because, the marriage was not acceptable to the family of Ayulusha; they got married on 08.07.2020 and the marriage was registered in the office of the Sub-Registrar, Kalasapakkam, Thiruvannamalai District, on 09.07.2020 vide Certificate No.69/2020.

3. It is the specific case of the petitioner that the date of birth of Ayulusha is 15.06.2002. While so, on the complaint lodged by Lakshminarayanan, father of Ayulusha, a case in Vettavalam Police Station Crime No.1331 of 2020 was registered on 13.06.2020, for 'girl missing'. Later, the police altered the case into one under Sections 363 and 366 IPC r/w Sections 4 and 18 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act") on 14.07.2020 after the arrest of the petitioner. The petitioner was remanded in judicial custody on 14.07.2020 and Ayulusha was produced before the Child Welfare Committee, Thiruvannamalai, which lodged her in the Reception Home, Thiruvannamalai, on 15.07.2020, on the premise that Ayulusha is a child. However, on the same day, the Child Welfare Committee, Thiruvannamalai, transferred Ayulusha to the second respondent Home, through the police, where, Ayulusha is now lodged.

4. The petitioner was released on bail by this Court in CrI.O.P.No.11708 of 2020 on 04.08.2020. Thereafter, he filed a petition in CrI.M.P.No.513 of 2020 in the Special Court for the POCSO Act Cases, Thiruvannamalai, for custody of Ayulusha, which was dismissed on 17.12.2020, on the ground that the petitioner is an accused in a case and since there is a dispute in the age of Ayulusha, custody cannot be granted to him.

5. Under such circumstances, the petitioner has filed the present habeas corpus petition.

6. Heard Mr.A.Ramalingam, learned counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing the first respondent/State.

7. Today, Mr.S.Vijayakumar (Mobile No.9498150714), Grade III - 1702, Vettavalam Police Station, Keezhpennathur Taluk, Thiruvannamalai District, is present.

8. It is seen that the board examination mark sheet of Ayulusha shows her date of birth as 15.06.2002, which means as on today viz., 22.01.2021, she is 18 years, 7 months and 7 days. However, Lakshminarayanan, third respondent, has obtained a

birth certificate from Oulgatret Municipality, Puducherry, to the effect that the date of birth of Ayulusha is 29.10.2002.

9. A perusal of the said birth certificate shows that it has been obtained only on 23.12.2020 and it does not bear the name of Ayulusha, but, bears the name of one Janavi, D/o.Padmavathy and Narayanan. Even assuming for a moment that the birth certificate is true and the date of birth of Ayulusha is 29.10.2002, as on today, viz., 22.01.2021, she is 18 years, 2 months and 22 days. Thus, Ayulusha cannot be detained under custody without her consent.

10. This Court also perused the statements of Ayulusha under Section 164 Cr.P.C. that has been recorded by the Judicial Magistrate No.II, Thiruvannamalai, on 18.08.2020, wherein, she has stated that she is 18 years and she has gone on her own volition with the petitioner herein and had got married to him in Kalasapakkam Murugan Temple on 08.07.2020 and registered the marriage on 09.07.2020 in the office of the Sub-Registrar, Kalasapakkam.

In such view of the matter, the order dated 17.12.2020 passed in Crl.M.P.No.513 of 2020 on the file of the Special Court for POCSO Act Cases, Thiruvannamalai, is set aside and direct the release of Ayulusha from the custody of the second respondent Home and set her at liberty. It is open Ayulusha to chalk out her own life.

Sd/-

Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To

1.The Special Judge,
Special Court for the POCSO Act Cases,
Thiruvannamalai.

2.The Judicial Magistrate No.II,
Thiruvannamalai.

3.The Inspector of Police,
Vettavalam Police Station,
Keezhpennathur Taluk,
Thiruvannamalai District.

4.The President,
Nesam home for Women and Old aged Persons,
Thiruvannamalai Town,
Thiruvannamalai District.

5.The Public Prosecutor,
High Court, Madras.

6.The Child Welfare Committee,
Thiruvannamalai.

+2cc to Mr.A.Ramalingam, Advocate Sr.No.3798

AKM/18.2.21 /4P-9C/

H.C.P. No.64 of 2021
22.01.2021



WEB COPY