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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2021

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.271 of 2021

S.Sakthivel

S/o.Subbiramani

..Petitioner/Father of Detenues

Vs.

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

2. The Inspector of Police,
Omalur Police Station,
Salem.

3. N.Kalaiselvi
W/o.Subramani

..Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to issue a direction to the second respondent to produce the detenues, namely, Minor Kabinesh and Harshita Sri, aged about 3 and 4 years, S/o.Sakthivel, before this Court and hand over their custody to the petitioner.

For Petitioner : Mr.C.Karthik & Mr.M.Ganesh Babu

For Respondents: Mr.R.Muniyapparaj
Government Advocate [Crl.side]
[R1 & R2]

ORDER

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

This petition has been filed seeking a direction to the second respondent to produce the detenues, namely, Minor Kabinesh and Harshita Sri, aged about 3 and 4 years, S/o.Sakthivel, before this Court and hand over their custody to the petitioner.



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2. On 04.03.2021, we passed the following order:

'It is the case of the petitioner that his two children viz., Kabinesh and Harshita Sri, aged about 3 and 4 years, respectively, are in the illegal custody of his wife viz., Kalaiselvi, third respondent herein and that the police are not taking effective steps to secure them.

2. Today, Mr.Abdul Azeez (Mobile No.94981 67873), Special Sub-Inspector of Police, Omalur Police Station, Salem District, is present.

3. On instructions, the learned Additional Public Prosecutor submitted that earlier while Kalaiselvi was living with her mother viz., Rathinam, in Dindigul, she went missing; on a complaint lodged by Rathinam, a case in Dindigul Town North Police Station Crime No.1513 of 2020 was registered for the offence under Section 363 IPC against unknown accused; Rathinam filed H.C.P(MD).No.520 of 2020, in which, the police produced Kalaiselvi before Madurai Bench of this Court on 06.10.2020 via video conference; Madurai Bench of this Court disposed of H.C.P.(MD).No.520 of 2020 as follows:

"2.Today, both the detenues appeared before this Court through Video Conferencing. On enquiry, the first detinue Kalaiselvi informed that on 11.06.2020, one Thamaraiselvan had taken them by force and now, she is willing to go with her mother/petitioner herein.

3.In the light of the above statement of the first detinue, the habeas corpus petition is closed as no further orders are necessary."

thereafter, Kalaiselvi lived with her husband Sakthivel, petitioner herein; on a complaint lodged by Sakthivel, a case in Omalur Police Station Crime No.1428 of 2020 was registered on 30.12.2020 for 'women and children missing' and during the course of investigation, it came to light that Kalaiselvi has actually eloped with one Thamaraiselvan.

4. However, the learned counsel for the petitioner contended that earlier Kalaiselvi herself has stated that she was forcibly taken away by



Thamaraiselvan.

In such view of the matter, we direct the Deputy Superintendent of Police, Omalur Sub-Division, to monitor the investigation in Omalur Police Station Crime No.1428 of 2020 and keep the petitioner informed of the developments, if any. As and when Kalaiselvi, aged about 21 years, Kabinesh, aged about 3 years and Harshita Sri, aged about 4 years, were secured, they shall be produced before the Judicial Magistrate Court, Omalur, under intimation to the petitioner. On such production, the learned Magistrate shall pass appropriate orders.

Post the matter on 21.04.2021.'

3. Mr.C.Karthik (Enrol.No.2397/2009) and Mr.Ganesh Babu (Enrol.No.2947/2009), Mobile No.: 97104 23458, have come on Change of Vakalath for the petitioner.

4. Today, Mr.Paranthaman, Sub-Inspector of Police, Omalur Police Station, Mr.Murugesan, Sub-Inspector of Police, Saidapet J1 Police Station and Mr.Anandanayagi, Police Constable, Saidapet J1 Police Station, produced the wife of the petitioner viz., Kalaiselvi, aged 21 years and the detenues viz., Kabinesh and Harshitha Sri. The petitioner and the parents of Kalaiselvi are present before this Court.

5. When enquired by us, Kalaiselvi clearly stated that she will not go with her parents since she fears that they would harm her. She further stated that she is living separately with her two children at No.5/2, Thiruvalluvar Street, near Srinivasa Mini Kalyana Mandapam, Tharamani, Chennai 600 113 and her mobile number is 91762 90626.

6. In view of the above, it cannot be stated that Kalaiselvi is in illegal detention.

With the above observation, this Habeas Corpus Petition is closed with liberty to the parties to work out their remedy in the manner known to law.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gm



To

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

2. The Inspector of Police,
Omalur Police Station,
Salem.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Karthik, Advocate, S.R.No.35815/2021

H.C.P.No.271 of 2021

SR(CO)
RGA(25/08/2021)