



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 17.04.2021
PRONOUNCED ON : 03.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.432 of 2021

S.Gopi ... Petitioner/Husband and
Father of the detenues respaly

-VS-

1.The Superintendent of Police,
Office of the Superintendent of Police,
Tiruchirappalli District.

2.The Inspector of Police,
Uppilyapuram Police Station,
Tiruchirappalli District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus, directing the respondents to produce the person or body of the detenues by name Lawanya, W/o.Gopi aged about 23 years and Sahana D/o.Gopi, aged about 4 years before this Court and set them at liberty.

For Petitioner : Mr.A.Rajini
For Respondents: Mr.K.K.Ramakrishnan
Additional Public Prosecutor

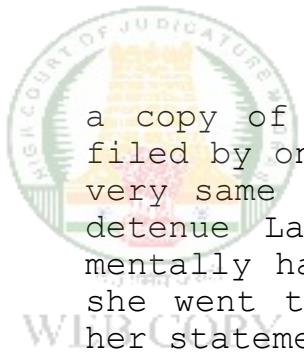
O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

This Habeas Corpus Petition is filed by the husband and father of the detenus respectively for a direction to produce the detenues namely, Lawanya aged about 23 years and Shana aged about 4 years before this Court and set them at liberty.

2.The case of the petitioner is that he is working as a Welder and used to travel to various places in respect of his work. While so, after completion of his work on 02.03.2021 when he contacted his wife Lawanya, her mobile was switched off. When he returned home, his wife and their daughter were found missing. Therefore, he sent a complaint to the respondent Police on 09.03.2021 and thereafter, he has filed this habeas corpus petition.

3.When the matter is taken up for hearing today
Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor produced
<https://hcservices.ecourts.gov.in/hcservices/>



a copy of the order passed in H.C.P(MD)No.262 of 2021, which was filed by one Arumugam, the father of the detenu Lawanya seeking the very same relief. In that case, the detenues were produced and the detenu Lawanya informed this Court that she was physically and mentally harassed by her husband / the petitioner herein and hence, she went to Chennai and was staying in a women's hostel. Based on her statement that petition was closed by this Court on 09.02.2021.

4.The present habeas corpus petition is filed by the husband, for the very same relief sought for in H.C.P(MD)No.262 of 2021, which was filed by the father of the detenu Lawanya.

5.This Court is of the opinion that whether such a habeas corpus petition is maintainable. In this regard it would be relevant to refer to a decision of a Division Bench of this Court in **Sameena Vs The Superintendent of Police, Namakkal and another [H.C.P (MD) No.737 of 2017, decided on 22.06.2018]**, wherein this Court regarding the maintainability of a habeas corpus petition, by referring a number of decisions, has dealt with the issue and the relevant portions are extracted hereunder:

"3.The question arises whether the present Habeas Corpus Petition shall be maintained or not. On a plain reading of the affidavit filed in support of the present Habeas Corpus Petition, we are unable to find any substantial ground to arrive at a conclusion that the detenu is in illegal detention. In the absence of any such illegal detention or at least a suspicion, based on certain materials, we are not inclined to consider the present Habeas Corpus Petition. It is a condition precedent that the petitioner should establish an illegal detention or at least a reliable strong suspicion and the man/woman missing cannot be brought in the Habeas Corpus Petition.

4.Considering the scope of the Habeas Corpus Petition under the Constitution, this Court has to consider whether the ingredients, which are all requisites for entertaining the Habeas Corpus Petition is fulfilled or not. In the present case on hand, even there is no allegation or averment in respect of any such illegal detention or suspicion raised by the Petitioner. Further, the police investigation reveals that the detenu is having the habit of eloping with various women. Such being the result of the investigation, we are of the considered opinion that no purpose would be served by keeping the present Habeas Corpus Petition pending and the maintainability of the Habeas Corpus Petition has been considered by this Court and the legal position is enumerated in W.P.No.2309 of 2016 and the relevant paragraphs of the same are extracted hereunder:

<https://hcservices.ecourts.gov.in/UseCases/> 13. The Court is frequently witnessing that Man/Women



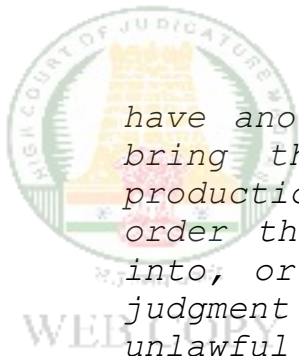
Missing cases are converted as Habeas Corpus petitions. Two aspects are to be considered, fundamental right of a citizen for free movement is also a fundamental right, enshrined under the Constitution of India. Personal liberty is also a fundamental right enshrined in Part III of the Constitution of India. It is to be co-related that personal liberty must have a cogent and harmonious understanding in respect of the freedom to move anywhere across the country. A person, who voluntarily moving from home or anywhere to a place of his own choice, then the family members or any other person concerned with such a person can file a case for Man missing, if the Police is able to investigate the matter and find that the person moved at his own volition and is not illegally detained, then the question of entertaining the Habeas Corpus petition would not arise at all. Therefore, it is a condition precedent that a person filing a Habeas Corpus petition should establish that there is a prima facie case of "illegal detention" or at least a suspicion in respect of such illegal detention. In the absence of any of these ingredients, no Habeas Corpus petition can be entertained under Article 226 of the Constitution of India.

14.Habeas Corpus "ad subjiciendum" means "that you have the body to submit or answer" which is called as Festinum Remedium - A Speedy remedy, which has been sought by the petitioner in the instant case.

15.It is necessary that violation of the fundamental rights enshrined under Part III of the Constitution of India must be established for the purpose of filing the Habeas Corpus petition."

17. A Constitution Bench judgment of the Supreme Court in the matter of Kanu Sanyal v. District Magistrate, Darjeeling and others reported in (1973) 2 SCC 674, traced the history, nature and scope of the writ of habeas corpus. It has been held by Their Lordships that it is a writ of immemorial antiquity whose first threads are woven deeply "within the seamless web of history and untraceable among countless incidents that constituted a total historical pattern of Anglo-Saxon jurisprudence". Their Lordships further held that the primary object of this writ is the immediate determination of the right of the applicant's freedom and that was its substance and its end. Their Lordships further explaining the nature and scope of a writ of habeas corpus held as under: -

"The writ of habeas corpus is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to



have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in the order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint". But the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness. The essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release, if the detention is found to be unlawful. That is the primary purpose of the writ, that is its substance and end. The production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained.

... ..
... ..
... ..

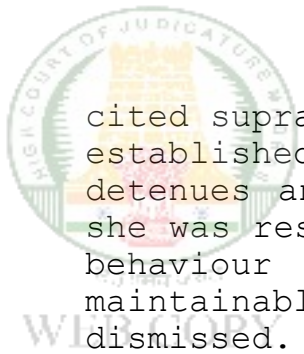
5. Accordingly, in the present Habeas Corpus Petition, there is not even an iota of doubt in respect of any illegal detention nor any such allegations are made out in the petition. This being the factum of the case, the petitioner has not established any cause for the purpose of entertaining the present Habeas Corpus petition."

6. From the above it is clear that there must exist a condition precedent that the petitioner should establish an illegal detention or at least a reliable strong suspicion of illegal detention.

7. According to the petitioner herein, the detenues were found missing from 02.03.2021, whereas in H.C.P(MD)No.262 of 2021, it is averred that the detenues were found missing from 21.01.2021 and the petitioner therein lodged a complaint before the Inspector of Police, Uppliyapuram Police Station, Trichy District on 21.01.2021.

8. It is seen that the petitioner herein without even mentioning the date on which, the detenues had gone missing, has sent a formal complaint on 09.03.2021 through post and filed the present petition. The detenues have appeared before this Court in the earlier round of litigation and expressed that due to the behaviour of the petitioner herein, they have left the matrimonial home and living in a women's hostel at Chennai.

9. By applying the ratio laid down by this Court in the case



cited supra, it is seen that the petitioner has not established any illegal detention in this case in respect of the detainees and moreover, the detainee Lawanya herself has stated that she was residing in a woman's hostel at Chennai due to her husband's behaviour towards her, this habeas corpus petition is not maintainable and accordingly this habeas corpus petition is dismissed. However, it is always open to the petitioner to work out his remedy by filing necessary Guardian OP for the custody of the child before the competent civil forum.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

To

- 1.The Superintendent of Police,
Office of the Superintendent of Police,
Tiruchirappalli District.
- 2.The Inspector of Police,
Uppilyapuram Police Station,
Tiruchirappalli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.432 of 2021

03.06.2021

CN(16.06.2021) 5P 4C