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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

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THE HONOURABLE MR. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

H.C.P.No.208 of 2022

D.Karpagavalli ..Petitioner/Mother of the Detenue
Vs.

1. The Superintendent of Police,
Mayiladuthurai,
Mayiladuthurai District.
2. The Inspector of Police,
Vaitheeswaran Koil Police Station,
Mayiladuthurai.
3. The Social Welfare Officer,
Mayiladuthurai District.
4. The Child Protection Officer,
District Child Protection Unit,
Collectorate, Mayiladuthurai District.

5.Vaithiyanathan @ Vaitha ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents to produce the body of the detenu the petitioner's 3 month old male baby whose whereabouts not known before this Court and handover the custody to the petitioner.

For Petitioner : Mr.R.Prathap Kumar

For Respondents : Mr.R.Muniyapparaj,
Addl. Public Prosecutor
for R1 to R4
Mr.Sivakumar
for M/s.K.M.Vijayan
Associates for R5



ORDER

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

Seeking a direction to the respondents to produce the three month old baby of the petitioner before this Court and to handover the custody to her, the present habeas corpus petition has been filed.

2. On 16.02.2022, this Court passed the following order:

On 09.02.2022, we passed the following order :

"It is the case of the petitioner that her three months old male baby is in the illegal custody of Vaithiyanathan @ Vaitha, fifth respondent herein and that the police are not taking effective steps to secure the child. On these allegations, coupled with other allegations, the present habeas corpus petition has been filed.

2. Heard Mr.R.Prathap Kumar, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 to 4. Mr.Sivakumar (Enrollment No.1591/1998; Mobile No.9840363686), learned counsel representing M/s.K.M.Vijayan Associates appeared before this Court via video conferencing and stated that he is taking notice for the fifth respondent.

3. Today, V.Balasubramanian (Mobile No.94421 42150), Special Sub-Inspector of Police, Vaitheeswaran Koil Police Station, Mayiladuthurai District, is present.

4. On instructions, the learned Additional Public Prosecutor submitted that on a complaint given by the petitioner, a petition enquiry in Vaitheeswaran Koil Police Station C.S.R.No.50 of 2022 is pending and that the whereabouts of the petitioner is not known even to the police. He produced a letter purported to have been sent by the petitioner to the Superintendent of Police, Mayiladuthurai, wherein, it is stated that some named persons had contrived a story, as if the petitioner became pregnant through the fifth respondent and got the child through him, which is not true.

5. In such view of the matter, this Court issues the following directions:

- i. The petitioner shall appear before the police for enquiry forthwith and participate in the enquiry so as to find out as to



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- whether any child was born to the petitioner at all as contended by her in her complaint;
- ii. The police shall give adequate protection to the petitioner, so that, no harm befalls her;
 - iii. The petitioner shall be present before this Court on 14.02.2022 at 10.30 a.m.; and
 - iv. The police shall take effective steps to trace the three months old baby of the petitioner, if any, born to her and produce it before the Child Welfare Committee, Mayiladuthurai, for ordering appropriate custody of the baby.

Post the matter on 14.02.2022."

2. On 14.02.2022, Mrs. Gayathri, Sub-Inspector of Police and Mr. V. Balasubramanian, Special Sub-Inspector of Police, both attached to Vaitheeswaran Koil Police Station, Mayiladuthurai District, were present before this Court.

3. On 14.02.2022, Mrs. Gayathri, Sub-Inspector of Police, filed a status report dated 11.02.2022, wherein, it is stated as follows :

"... Further the petitioner herein came to know that the 5th respondent admitted her in K.J. Hospital for delivery, wherein the records found in the Hospital reveals one Senthil from Mayiladuthurai shown as father of the new born baby which shows the ill-motive of the 5th respondent.

Hence the petitioner gave the new born baby to one Muslim couple namely Mr. Abbas and Mrs. Pythre Banu residing at Needur Village near Mayiladuthurai through the auto drivers namely Balamurugan of Vaitheeswaran Kovil and one Senthil from Mayiladuthurai based on the instruction given by the 5th respondent herein.

(7) It is submitted that based on the enquiry conducted with the de facto complainant/petitioner herein, I have enquired the above said auto drivers namely Balamurugan and Senthil and recorded their statement.

(8) It is submitted that based on the de facto complainant/petitioner statement, on the same day i.e., 10.02.2022, I went to the house of above Muslim couple and found the baby under their care. Also recorded the said couple statement, in which they had



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stated that the petitioner given a new baby to them stating that the said baby was born illegally to her and she could not bale to take care of the child due to family and financial circumstances and hence she had handed over the child to them.

(9)It is submitted that on the same day secured the new born child from the said Muslim couple and handed over the baby to the Child Welfare Committee, Nagapattinam and the said Child Welfare Committee handed over the baby to Annai Sathya Government Children Home, Nagapattinam. Since the baby was newly born i.e.,only 31/2 months old, the Child Welfare Committee, Nagapattinam directed the above said Muslim couple to stay along with the baby in the Home from morning to evening to take case of new born child."

4.The petitioner was also present before this Court on 14.02.2022. We heard Mr.R.Prathap Kumar, learned counsel for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 to 4 and Mr.Sivakumar, learned counsel for the 5th respondent and adjourned the case to today (16.02.2022) and directed the Deputy Superintendent of Police, Mayiladuthurai, District Child Protection Officer, Mayiladuthurai and the Child Welfare Committee, Mayiladuthurai, to be present before this Court via video conferencing.

5.Today, when the matter is taken up for hearing, Mr.Lamech, Deputy Superintendent of Police, Sirkali Sub-Division, Mr.Ayyappan, Chairperson, Child Welfare Committee, Mayiladuthurai, Mr.Manimaran, Circle Inspector, Mrs.Umadevi, Protection Officer, Nagapattinam District, are present before this Court via video conferencing.

6.Heard Mr.R.Prathap Kumar, learned counsel for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 to 4 and Mr.Sivakumar, learned counsel for the 5th respondent.

7.We are informed by the Chairperson, Child Welfare Committee, Mayiladuthurai, that the committee has named the baby "Chandran" and the baby (Chandran) is now in SOC SEAD Specialized Adoption Agency at Trichy.

8.We are of the considered opinion that the



paternity of the baby (Chandran) should have to be determined scientifically and therefore, it is necessary that DNA profiling is done.

9.It is seen that the petitioner was admitted in K.J. Hospital, Kuthalam, where, she delivered the baby (Chandran) on 24.10.2021 at 06.05 a.m. In the hospital records, the name of the petitioner is available and beneath that, the name of one Senthil finds place.

10.According to the police, preliminary investigation revealed that the fifth respondent has fathered the baby (Chandran), but, one Balamurugan and Senthil, who are auto drivers, had admitted the petitioner in K.J. Hospital for delivery. Hence, the name of Senthil finds place in the hospital records.

11.In our opinion, a regular FIR requires to be registered by the police on the complaint given by the petitioner, as appropriate investigation cannot be done based on a C.S.R. entry. To rule out the possibility of Senthil and Balamurugan having fathered the baby (Chandran), their blood samples should also be collected by the police for DNA profiling.

12.Therefore, we issue the following directions:

- i. The Station House Officer, Vaitheeswaran Koil Police Station, Mayiladuthurai District, shall register a regular FIR in C.S.R.No.50 of 2022 and take appropriate steps to collect five FTA cards from the Tamil Nadu Forensic Science Laboratory, for drawing the blood samples of the petitioner (Karpagavalli), fifth respondent (Vaithiyanathan @ Vaitha), baby (Chandran), Senthil and Balamurugan.
- ii. The fifth respondent, Senthil and Balamurugan shall cooperate with the police in giving their blood samples, failing which, the law would take its own course, as what is paramount is the interest of the baby (Chandran) and its protection.
- iii. The blood sample of the baby (Chandran) may be collected by producing the baby (Chandran) before the Medical Officer in K.A.P. Viswanatham District Headquarters Government Hospital, Trichy, as it would be inconvenient to bring the baby (Chandran) from Trichy to Mayiladuthurai.
- iv. As regards the drawal of blood samples of the other four persons, they can be produced before the Government Hospital, Sirkazhi, where, their



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blood samples may be drawn and sent along with the blood sample of baby (Chandran) to the Tamil Nadu Forensic Science Laboratory with the request for DNA profiling and for determining paternity of the baby (Chandran).

- v. Until further orders of this Court, the baby (Chandran) shall remain safe in the custody of SOC SEAD Specialized Adoption Agency at Trichy.
- vi. The police shall ensure that no harm befalls either on the petitioner or the baby (Chandran).
- vii. The Protection Officer, Nagapattinam, shall proceed with the enquiry of the case in accordance with law and submit a copy of her report to this Court.

With the above directions, this matter stands adjourned to 28.02.2022.

3. On 28.02.2022, this Court passed the following order:

Today, Mr.B.Amsendiran, Legal cum Probation Officer, District Child Protection Office, Nagapattinam [Mobile No.90479 27692] and Mr.V.Balasubramanian, Special Sub-Inspector of Police, Vaitheeswaran Koil Police Station, Mayiladuthurai District [Mobile No.94421 42150] are present.

2.The District Probation Officer has filed a report dated 25.02.2022 narrating the entire sequence of the events of the case and has stated that the petitioner is not living in her house and that she is living in her relatives house.

3.Pursuant to our order dated 16.02.2022, the police have registered a case in Vaitheeswarankoil P.S. Crime No.32/2022 on 16.02.2022 for "Born Baby Male Missing" based on the complaint given by the petitioner.

4.A copy of the First Information Report in Vaitheeswarankoil P.S. Crime No.32/2022 and the report dated 25.02.2022 of the District Probation Officer were furnished to learned counsel for the petitioner and learned counsel for the fifth respondent.

5.On instructions, Mr.R.Muniyapparaj, learned Additional Public Prosecutor, submitted that five FTA cards were collected from the Tamil Nadu Forensic Sciences Department and the blood samples of the petitioner [Karpagavalli], fifth respondent [Vaithiyanathan @ Vaitha], Senthil and Balamurugan were



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collected in the Government Hospital, Sirkazhi and have been sent to the Tamil Nadu Forensic Sciences Department for DNA profiling. Similarly, the blood sample of baby [Chandran] was collected at K.A.P.Viswanatham District Headquarters Government Hospital, Trichy and that has also been sent to the Tamil Nadu Forensic Sciences Department.

6. In view of the above, we direct the Tamil Nadu Forensic Sciences Department to complete the DNA profiling in this case viz., Vaitheeswarankoil P.S. Crime No.32/2022 within a period of four weeks and furnish a report to the police as well a copy to this Court. The matter may be taken as top priority in view of the sensitive nature of the case. Until further orders, the baby (Chandran) shall remain in SOC SEAD Specialized Adoption Agency, Trichy.

Call on 28.03.2022.

4.Today, when the matter was taken up for hearing, (1) Ms.N.Gayathri, Sub Inspector of Police, Vaitheeswaran Kovil Police Station, Mayiladuthurai District, (2)Ms.T.Sheela, Police Constable, Vaitheeswaran Kovil Police Station, Mayiladuthurai District and (3) Mr.Amsendran, Legal Probation Officer, District Child Protection Officer, Nagapattinam are present.

5.The Director (I/c), Forensic Sciences Department, Chennai has sent a communication dated 11.03.2022 along with D.N.A. Report bearing No.DNA/PAT/55/2022 dated 10.03.2022 to this Court. A similar report has also been sent to the Deputy Superintendent of Police, Sirkazhi Sub Division, Mayiladuthurai. A photocopy of the D.N.A. Report was furnished across the bar to Mr.R.Prathap Kumar, learned counsel for the petitioner. The concluding portion of the said D.N.A. Report reads as under:

Conclusion: From the DNA typing results of the above samples, it is found that

(i)In the absence of identical twins, Mr.Vaithiyanathan @ Vaitha is the biological father of the male child Chandran.

(ii)Mr.Balamurugan and Mr.Senthilkumar is excluded from the paternity of the male child Chandran.

6.Thus, from a reading of the above, it is clear that Vaithiyanathan @ Vaitha is the father of male baby Chandran born to the petitioner. As regards the custody of the baby, we grant liberty to the petitioner to approach the Child Welfare Committee, Nagapattinam to file an application seeking custody of the child. The Child Welfare Committee, Nagapattinam is directed to conduct an enquiry in accordance with the Rules and



pass appropriate orders within a period of two months from the date of the petitioner approaching them. If the petitioner is aggrieved by the orders of the Child Welfare Committee, it is open to her to file an appeal before the Children's Court under Section 101 of Juvenile Justice (Care and Protection of Children) Act, 2015.

7. With the above direction, the habeas corpus petition stands closed.

8. We place on record our appreciation for the DNA Unit of Tamil Nadu Forensic Sciences Department for conducting the DNA profiling expeditiously and sending report to this Court within a short time.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Superintendent of Police,
Mayiladuthurai, Mayiladuthurai District.
2. The Inspector of Police,
Vaitheeswaran Koil Police Station,
Mayiladuthurai.
3. The Social Welfare Officer,
Mayiladuthurai District.
4. The Child Protection Officer,
District Child Protection Unit,
Collectorate, Mayiladuthurai District.
5. The Child Welfare Committee,
Nagapattinam.
6. The Public Prosecutor,
High Court, Madras.
7. The Director,
Tamil Nadu Forensic Sciences Department,
Kamarajar Salai, Mylapore, Chennai - 4.

H.C.P.No.208 of 2022

MG(CO)
RGA(07/04/2022)