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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2022

CORAM

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

H.C.P.No.224 of 2022

Amudha ..Petitioner/Complainant

Vs.

1. The Superintendent of Police,
Thiruvallur District,
Thiruvallur.
2. The Inspector of Police,
All Women Police Station,
Avadi, Chennai.
3. Vanaja
President, Child Welfare Committee,
196/2, Plot No.873,
T.N.H.B. Kakkalur By-pass Road,
Thiruvallur District.

..Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents 1 to 3 herein to produce the body or person of the petitioner's daughter by name Kavitha, aged about 16 years, before this Court from the illegal custody of the 3rd respondent and hand over to the petitioner.

For Petitioner : Mr.R.Balakrishnan

For Respondents : Mr.R.Muniyapparaj,
Addl. Public Prosecutor

ORDER

[Made by P.N.PRAKASH, J.]

This habeas corpus petition has been filed seeking a direction to the respondents to produce the body or person of the petitioner's daughter by name Kavitha, aged about 16 years, before this Court from the illegal custody of the 3rd respondent and hand over to the petitioner.



2.It is the case of the petitioner that her daughter "X" (name not disclosed for the sake of anonymity), she being a minor, was raped by some unknown person, on account of which, she conceived and later, the fetus was aborted. It is the further case of the petitioner that her daughter "X" is now in the illegal custody of the Child Welfare Committee (CWC), Thiruvallur and on these allegations the petitioner has filed the present habeas corpus petition.

3.Today D.Mahalakshmi(Mobile No.94981 28625),Women Head Constable 17406, All Women Police Station, Avadi, Chennai, is present.

4.Heard Mr.R.Balakrishnan, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents/State.

5.On instructions, the learned Additional Public Prosecutor gave a totally different story. He submitted that the petitioner has two daughters and one son, whose name is Krishnakumar; the petitioner's elder daughter is suffering from Tuberculosis and therefore, the petitioner and her elder daughter used to sleep in one room leaving "X" and her brother Krishnakumar to sleep in another room, on account of that, Krishnakumar is said to have had incestuous relationship with "X", due to which, "X" conceived; "X" was admitted in the Kilpauk Medical College Hospital, Chennai, on 14.12.2021 and the hospital authorities informed the jurisdictional police; accordingly, the case was taken over by the Inspector of Police, All Women Police Station, Avadi, who went to the hospital and recorded the statement of "X", based on which, a case in Avadi Police Station Crime No.26 of 2021 was registered on 15.12.2021 for the offences under Sections 5 (j)(ii) and 6 of the Protection of Children from Sexual Offences Act, 2012, against Krishnakumar. He further submitted that abortion was done, but the fetus is preserved. It is his further submission that when the police went to arrest Krishnakumar, the petitioner is trying to protect Krishnakumar by saying that she would commit suicide and therefore, the police are in dilemma as to how to proceed in this case; on account of this problem in the house of "X", "X" did not want to go to her house and therefore, she was produced before the CWC, Thiruvallur and on the orders of the CWC, she is now kept in Sevalaya, Pakkam village, Thiruvallur.

6.In our opinion, in a case of this nature, a writ of habeas corpus petition cannot be issued as the custody of "X" is pursuant to the valid order passed by the CWC, Thiruvallur, under the Juvenile Justice (Care and Protection of Children) Act, 2015. It is open to the petitioner to approach the CWC, Thiruvallur, seeking custody of "X" and it is for the CWC to



conduct a thorough enquiry and pass appropriate orders in accordance with law, as "X" is a victim of an offence and requires to be protected.

7. That apart, "X" is a minor and she is aged about 16 years. Mr. Balakrishnan, learned counsel for the petitioner submitted that Krishnakumar is also a minor at the time of occurrence.

8. In view of the above, since the investigation in Crime No. 26 of 2021 has to proceed in the manner known to law, no writ of habeas corpus petition can be issued as prayed for by the petitioner.

Hence, this habeas corpus petition stands closed with liberty to the petitioner to work out her remedy in the manner known to law.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

nsd

To

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

2. The Inspector of Police,
All Women Police Station,
Avadi, Chennai.

3. The Director,
Child Welfare Committee,
Thiruvallur District.

4. The President,
Child Welfare Committee,
196/2, Plot No. 873,
T.N.H.B. Kakkalur By-pass Road,
Thiruvallur District.

5. The Public Prosecutor,
High Court, Madras.

+1cc to M/s. R. Balakrishnan, Advocate, S.R.No. 9505

H.C.P.No. 224 of 2022

RR(CO)

RGA(01/03/2022)