

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

H.C.P.(MD)No.1234 of 2022

Anbuselvi

: Petitioner

Vs.

1.The Superintendent of Police,
O/o. The Superintendent of Police,
Virudhunagar District.

2.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
(Crime No.59/2022).

3.The Chairman,
Child Welfare Committee,
Virudhunagar District.

4.The Director,
Jeevakal Children Home,
Srivilliputhur Main Road,
Enjar Vilakku,
Sivakasi West,
Sivakasi.
Virudhunagar District.

: Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the body or person of petitioner's daughter namely Nirmala D/o. Jegajothimani aged about 15 years before this Court and hand over the custody from the fourth respondent to the petitioner.

For Petitioner : Mr.B.Muneeshwaran

For Respondents 1 to 3 : Mr.T.Senthil Kumar

Additional Public Prosecutor

O R D E R

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

It is the case of the petitioner that her daughter X aged 15 years, is in the illegal custody of the fourth respondent and in order to secure her daughter, the present Habeas Corpus Petition is filed.

2.Today, Mr.N.Asan Sikkdar Ali [Mob.No.8300058441], Special Sub-Inspector of Police, Virudhunagar East Police Station, Virudhunagar District and the petitioner are present before this Court.

3.X is produced before us from the fourth respondent Home. On instructions, learned Additional Public Prosecutor submitted that X is the daughter of the petitioner and Jegajothimani; Jegajothimani had sexually abused his own daughter X, pursuant to which, on a complaint given by the petitioner, a case in Virudhunagar East Police Station in Crime No.59 of 2022 was registered under Sections 7, 8, 5(l), 5(n) and 6 of the POCSO Act and Jegajothifmani was arrested by the police on 30.04.2022 and that he continues to be in judicial custody.

4.Learned Additional Public Prosecutor also submitted that Jegajothimani was detained under Act 14 of 1982 on 14.05.2022. Since X is a victim of an offence, the Child Welfare Committee, Virudhunagar [for brevity, 'CWC'] in Case No.143 of 2022, has passed orders on 16.06.2022, lodging X in the fourth respondent Home, until she attains the age of 18. These facts are

not known to the petitioner and therefore, the petitioner has filed the present Habeas Corpus Petition, alleging that X is in the illegal custody of the fourth respondent.

5. In our considered opinion, when X has been lodged by an order of the CWC in the fourth respondent Home, it cannot be stated that she is in the illegal custody of the fourth respondent, for the issuance of a Writ of Habeas Corpus. We are also aware of the fact that the orders of CWC are neither hosted in the website nor are they furnished to the family of the victims.

6. Learned Additional Public Prosecutor further submitted that the CWC also does not send a copy of their orders to the investigating officer concerned nor to the jurisdictional Special Court for POCSO cases. Section 101 of the Juvenile Justice Act, 2015 [for brevity, 'JJ Act'] provides for an appeal to the Children's Court, against the order of the CWC.

7. We reliably understand that the Children's Court referred to in Section 101 of the JJ Act means the Special Court for POCSO cases. Though Section 101 of the JJ Act says that an appeal should be filed within 30 days, in this case, the petitioner was made

aware of the order dated 16.06.2022 only today, and therefore, liberty is given to the petitioner to file an appeal under Section 101 of the JJ Act, in the Special Court for POCSO cases, Srivilliputhur, Virudhunagar District, challenging the order dated 16.06.2022 of the CWC, Virudhunagar, within one month from today. On such an appeal being filed, the Children's Court [Special Court for POCSO cases] may conduct an enquiry and if the Court is satisfied that X would be safe with the petitioner, it is open to the said Court to set aside the order of the CWC and grant custody of X to the petitioner. The Special Court shall not insist upon a certified copy of the order of the CWC and it would suffice, if the appeal is filed with the photocopy of the order that has been furnished by this Court to the petitioner.

8.With the above directions, this Habeas Corpus Petition stands closed.

[P.N.P.,J.] & [R.H.,J.]
29.07.2022

Index : Yes/No

Internet : Yes/No

MR

To

- 1.The Special Court for POCSO Cases,
Srivilliputhur,
Virudhunagar District.
- 2.The Chairman,
Child Welfare Committee,
Virudhunagar District.
- 3.The Superintendent of Police,
O/o. The Superintendent of Police,
Virudhunagar District.
- 4.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
(Crime No.59/2022).
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD)No.1234 of 2022

P.N.PRAKASH, J.
and
R.HEMALATHA, J.

MR

ORDER MADE IN
H.C.P.(MD)No.1234 of 2022

29.07.2022