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H.C.P.No.444 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

H.C.P.No.444 of 2023

M.Hariharan

.. Petitioner

Vs

1.The Superintendent of Police
Kanchipuram District.

2.Inspector of Police,
Baluchetty Chathram Police Station,
Kanchipuram Taluk and District.

3.Sundharavaradhan

4.Balasubramaniam

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus directing the respondents to secure and produce the petitioner's friend, Mr.Palani, aged 71 years, before this Court from the illegal custody of respondent nos. 3 and 4 and set him at liberty forthwith.

For Petitioner : Ms.S.Vidya

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John
for R1 and R2



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ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity) has been filed stating that one Palani, aged 71 years who owns some immovable property has been detained in rehabilitation centre by his family by incorrectly saying that he is addicted to liquor.

2. Ms.S.Vidya, learned counsel on record for the petitioner is before us. To be noted, the petitioner is a member of the Bar.

3. Considering the facts and circumstances of the case and after hearing Ms.S.Vidya, learned counsel on record for petitioner, we deemed it appropriate to direct the Additional Public Prosecutor to accept notice for the official respondents (Respondents 1 and 2). To be noted, respondents 3 and 4 are private respondents and we are informed that they are the family members of the aforementioned Mr.Palani who shall be referred to as 'absentee' for the sake of convenience and clarity.



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4. Learned State Additional Public Prosecutor who accepted notice for respondents 1 and 2 submits that in the light of *Sengkodi* principle i.e., ratio in *S.Sengkodi Vs. State of Tamil Nadu* reported in 2009 (3) CTC 6, a habeas corpus petition at the instance of a practising advocate is not maintainable. We notice that in *Kishore Samrite Vs. State of Uttar Pradesh and Others* reported in (2013) 2 SCC 398, Honourable Supreme Court has explained who a 'next friend' is. However, it may not be necessary to enter upon, discuss and be detained by discussion on this aspect of the matter in the case on hand owing to the trajectory the matter has taken before us about which there shall be allusion infra. This means that this locus question is left open in this order.

5. Learned State Additional Public Prosecutor on instructions submits that one of the three sons of the absentee Mr.Kamalarasan is present in Court. Learned State Additional Public Prosecutor also submits that absentee was admitted in Keerthi Foundation De-Addiction and Rehabilitation Centre, Guduvancherry, Chennai - 603 202 by the son who is present in Court and that it is not a case of illegal detention or illegal custody. Learned State Additional Public Prosecutor also made a video call to the absentee and this Bench had the benefit of a brief interaction with the absentee in virtual mode. From the interaction, it comes to light



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that the absentee is not in illegal custody or illegal detention. Other than the fact that he came across as a person who is a little hard of hearing he was able to cogently and coherently interact with the Bench.

6. We are also informed that the absentee is likely to be discharged shortly but we do not want to delve into those aspect of the matter and embark upon a habeas corpus legal drill as it is not a case of illegal detention as already delineated supra.

7. Apropos, the sequitur is, captioned HCP is disposed of as closed albeit preserving all the rights and contentions of the petitioner, respondents 3, 4 and all others concerned with the absentee or his family members if there are any other proceedings in any other Court/Courts/Forum/Fora.

(M.S.,J.) (N.A.V.,J.)
24.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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- 2.The Inspector of Police,
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- 3.The Public Prosecutor,
High Court, Madras.



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and
N.ANAND VENKATESH, J.,**

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