



WEB COPY



H.C.P.No.449 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.449 of 2023

G.Shanmugam

.. Petitioner

Vs.

1.State Rep by

The Superintendent of Police,

Thiruvannamalai District.

(Reference No.RAS23001913)

2.The Inspector of Police,

Thiruvannamalai Town Police Station,

Thiruvannamalai.

3.Panner Selvam

4.Vislatchi

5.Arul

6.Subha

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the second respondent to produce the petitioner's son detenu Mr.Suresh @ Settu aged 35 years from the illegally by the 3 to 6 respondents before this Court and set him at liberty.



H.C.P.No.449 of 2023

For Petitioner : Mr.M.Krishnamoorthy
For Respondents-1 & 2: Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.N.Narkeeran

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 27.03.2023 and 03.04.2023 which read as follows:

'Proceedings made on 27.03.2023

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed saying that the petitioner's son one Suresh @ Settu left home on 23.10.2022 and it appears that he has been abducted by Respondents 3 and 4.

2. Mr.S.Arunkumar learned counsel for petitioner submits that Respondents 5 and 6 are the friends of the petitioner's son.



H.C.P.No.449 of 2023

WEB COPY

To be noted, petitioner's son shall hereinafter be referred to as 'absentee' for the sake of convenience and clarity.

3. Learned counsel for petitioner submits that the petitioner's parents are unlettered and they are eking out their livelihood as agricultural coolies. Owing to lack of awareness, after making an attempt to enquire with various people including the fifth and sixth respondents (to be noted, it is the case of the petitioner that fifth and sixth respondents did not respond), a complaint was lodged with the jurisdictional police i.e., second respondent on 04.01.2023.

4. To be noted, it is also the case of the petitioner that 10 days after the absentee went missing (on or about 02.11.2022) petitioner received a call from third and fourth respondents saying the petitioner has to repay the loan amount said to have been availed by the absentee and they also threatened to do away with absentee if the loan amount is not repaid.

5. Issue notice to official respondents i.e., Respondents 1 and 2. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor accepts notice for Respondents 1 and 2.

6. We are informed that learned Prosecutor is instructed by Mr.K.Baskaran, Special Sub-Inspector of Police, Tiruvanamalai Town Police Station. On enquiry we are told that Mr.K.Baskaran



H.C.P.No.449 of 2023

joined Tiruvannamali Town Police Station only four months ago.

WEB COPY

Learned Prosecutor submits on instructions that an FIR has since been registered and some enquiry was made with Respondents 5 and 6. It is submitted that Respondents 5 and 6 say that they are not aware of the whereabouts of the absentee. However, the Special Sub-Inspector of Police who is instructing the State Additional Public Prosecutor was not part of the team which enquired Respondents 5 and 6. We are informed that Sub-Inspector, who was part of the team, is on medical leave.

7. We find the following points which concern us:

a) Absentee is missing from 23.10.2022, complaint was given on 04.01.2023 (owing to lack of awareness on the part of the petitioner according to the petitioner counsel) but FIR has been registered only yesterday (26.03.2023), that too after the captioned HCP was filed on 06.03.2023 and after it is listed for hearing today;

b) Neither the second respondent nor the Sub-Inspector of Police who was part of this team who is said to have conducted enquiry qua Respondents 5 and 6 is before us and a Special Sub-Inspector of Police who is not aware of the proceedings has been sent to instruct the Prosecutor;



WEB COPY



H.C.P.No.449 of 2023

c) A perusal of the Case Diary shows that it does not even contain the statements of Respondents 5 and 6 though it is submitted that Respondents 5 and 6 were enquired.

8. In the light of the above i.e., in the light of the narrative thus far, we find this to be a fit case to be escalated to the first respondent.

Let first and second respondents remain present before this Court in the next listing. List one week hence. List on 03.04.2023.'

'Proceedings made on 03.04.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 27.03.2023.

2. Today, Mr.M.Krishnamoorthy, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for respondents are before this Court.

3. Pursuant to our earlier proceedings, respondents 1 and 2 are also present in person before us. Learned Additional Public Prosecutor has placed before us a list of dates and events



H.C.P.No.449 of 2023

WEB COPY

under a compilation dated 03.04.2023 and has also placed before us a copy of proceedings dated 30.03.2023 bearing reference Na.Ka.No.H1/07873/2023 regarding show cause notice issued to the police officers concerned. Learned State Additional Public Prosecutor on instructions expresses regret for the delay in registering F.I.R., says that it is not deliberate and that it was owing to preoccupation of the Police force in ATM heist in the District and further submits that such episodes will not recur.

4. As we are satisfied with the trajectory the matter has now taken, we deem it appropriate to say that aforementioned proceedings against Police officers can be closed. We also discharge respondents 1 and 2 from personal appearance in this Court.

5. Be that as it may, as regards the complaint, adverting to the earlier proceedings, learned Additional Public Prosecutor submits on instructions that a Special Team has since been formed and the respondents are hopeful of locating the absentee as expeditiously as possible and they are likely to do so in a fortnight, i.e., by 17.04.2023.

6. List captioned matter on 17.04.2023.'



H.C.P.No.449 of 2023

WEB COPY

3. Today, Mr.M.Krishnamoorthy, learned counsel for petitioner and learned Additional Public Prosecutor assisted by Mr.N.Narkeeran, learned counsel for respondents 1 and 2 (official respondents) are before us. The third respondent is not before us but the order we propose to make is such that it will not affect the rights of the third respondent in any manner.

4. Pursuant to the earlier proceedings, learned Additional Public Prosecutor has placed before us a status report dated 17.04.2023. Learned Additional Public Prosecutor is instructed by the second respondent. On instructions learned Additional Public Prosecutor submits that they would be able to complete the exercise of locating the absentee very quickly. Let the same be done.

5. On absentee being located, let the absentee be produced before the jurisdictional Magistrate (we are informed that learned Judicial Magistrate-I, Thiruvannamali is the jurisdictional Magistrate) with prior intimation to the petitioner.



H.C.P.No.449 of 2023

WEB COPY

6. The above drops curtains on the captioned HCP but we make it clear that all the rights and contentions of the petitioner or any one concerned for the absentee are preserved for moving any forum or coming to this Court with suitable prayer, if there is any due delay in locating the absentee and the rights of all concerned are also preserved for coming to this Court with similar/same prayer, if there is any other development touching upon illegal detention or illegal custody. We drop curtains on the captioned HCP.

7. Captioned HCP is disposed of as closed albeit with the aforementioned observations and preserving the rights and contentions of all concerned in the manner and to the extent indicated above.

(M.S.,J.) (M.N.K.,J.)

17.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

rsi



H.C.P.No.449 of 2023

WEB COPY

To

- 1.The Superintendent of Police,
Thiruvannamalai District.
- 2.The Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamalai.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.449 of 2023

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

rsi

H.C.P.No.449 of 2023

17.04.2023