



H.C.P.No.408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P.No.408 of 2023

Selvamani
S/o.Jayaraman

.. Petitioner

Vs.

1. The Commissioner of Police,
Vepery, Chennai – 600 007.
2. The Inspector of Police,
F-2, Egmore Police Station,
Chennai – 600 008.
3. Mrs.G.Monika
D/o.Late.Annamalai

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the 2nd respondent to produce the petitioner's son namely Gopi, son of Selvamani aged about 29 years before this Hon'ble Court and set him at liberty.

Page Nos.1/6



WEB COPY



H.C.P.No.408 of 2023

For Petitioner : Mr.G.Vinodhkumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.N.Narkeeran, Advocate

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 by father of Mr.Gopi, aged 29 years who shall hereinafter be referred to as 'absentee' for the sake of convenience and clarity.

2. Mr.G.Vinodhkumar, learned counsel on record for petitioner who is before us submits that the third respondent (private respondent) is spouse of the absentee. It is submitted that the absentee and the third respondent are married and marriage was solemnized on 19.11.2018. It is also submitted that from the wedlock, they have one daughter. The case of the petitioner is that the absentee is missing from 01.03.2022. Further case of the petitioner is that a criminal complaint has been lodged with the second respondent and the same has been taken on file as Crime No.93 of 2023 dated 04.03.2022.

Page Nos.2/6



H.C.P.No.408 of 2023

WEB COPY 3. Issue notice to the respondents 1 and 2 (official respondents) alone.

4. Mr.R.Muniyapparaj, learned Additional Public Prosecutor accepts notice for the respondents 1 and 2 (official respondents).

5. Learned Prosecutor, on instructions submits that the aforementioned complaint is being pursued and investigation thus far reveals that the absentee is not in illegal custody of the third respondent. Learned Prosecutor, on instructions submits that the third respondent is very much available in the address given in the cause title of the captioned HCP and that the third respondent is in the given address along with her parents. Therefore, it is clear from the narrative thus far that the case on hand is not a case of illegal detention.

6. Owing to aforesaid scenario emerging / unfurling in the hearing, we are not inclined to embark upon a habeas corpus legal drill as it is not a case of illegal detention. In this regard, we remind ourselves of the ratio laid



H.C.P.No.408 of 2023

down by this Court in **Selvaraj** case [**Selvaraj Vs State, rep. by the Superintendent of Police, Nagapattinam District** and another reported in **(2018) 3 MLJ (Crl) 712**]. On facts, in **Selvaraj's** case, petitioner's son was found missing, a case was registered for man missing, investigation was on but detenu could not be traced and therefore habeas corpus petition was filed. Hon'ble Division Bench of this Court held that it is a condition precedent that a person filing a habeas corpus petition should establish that there is a *prima facie* case of illegal detention or atleast a strong and reliable suspicion in respect of such illegal detention. In the absence of any of these ingredients, no habeas corpus petition can be entertained under Article 226 of the Constitution of India.

7. In the light of the narrative thus far, we deem it appropriate to drop the curtains on the captioned HCP albeit making it clear that the investigation will proceed in accordance with law. We also remind ourselves of **Sukumari** case [**K.Sukumari Vs Superintendent of Police and others** reported in **(2018) 2 LW (Crl) 636 : (2018) 3 MWN (Crl) 122**], wherein guidelines have been laid down as regards man missing complaints and the



H.C.P.No.408 of 2023

manner in which such complaints have to be dealt with.

WEB COPY

8. Though obvious, it is made clear that all the rights and contentions of the parties i.e., petitioner, absentee, third respondent and all other concerned are preserved, if there are any proceedings in any other Court / Courts / Forum / Fora.

9. Captioned HCP disposed of as closed albeit with the aforementioned observations. There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

20.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

To

1. The Commissioner of Police,
Vepery, Chennai – 600 007.
2. The Inspector of Police,
F-2, Egmore Police Station,
Chennai – 600 008.
3. The Public Prosecutor
High Court, Madras.

Page Nos.5/6



WEB COPY



H.C.P.No.408 of 2023

M.SUNDAR, J.,
and
N.ANAND VENKATESH, J.,

mk

H.C.P.No.408 of 2023

20.03.2023

Page Nos.6/6