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H.C.P.No.452 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.452 of 2023

Geetha

.. Petitioner

Vs

- 1.The Superintendent of Police
Office of District Superintendent of Police,
Tirupathur District.
- 2.The Deputy Superintendent of Police,
Office of District Deputy Superintendent of Police,
Ambur Taluk, Tirupathur District.
- 3.Inspector of Police,
Omerabad Police Station,
Ambur Taluk, Tirupathur District.
- 4.Stephen @ Karthick

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of writ of habeas corpus directing the 3rd
respondent to produce the body of the petitioner's daughter XXX,
aged 17 years, before this Court from the illegal custody of the
fourth respondent and hand over to the petitioner.



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For Petitioner : Mr.D.Thirumoorthy
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.M.Sylvester John
for R1 to R3

ORDER

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

This order will now dispose of captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity).

2. The crux and gravamen of the captioned HCP is petitioner's daughter XXX (We are masking the name of the petitioner's daughter and we shall be referring to her as 'absentee' for the sake of convenience and clarity and for obvious reasons) is missing from 07.03.2023.

3. Mr.D.Thirumoorthy, learned counsel for petitioner who is before us submits that a complaint was lodged with the jurisdictional police (third respondent) and that led to registration of 'First Information Report' (FIR) being FIR No.62 dated 14.03.2023 for an alleged offence under Section 363 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and



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clarity]. Learned counsel also submits that it may well be possible that the absentee is in illegal custody of the fourth respondent.

4. We directed the learned State Additional Public Prosecutor to accept notice for the official respondents (Respondents 1 to 3). Learned State Additional Public Prosecutor who accepted notice for respondents 1 to 3 (official respondents) on instructions submits that pursuant to aforementioned FIR, investigation was kick started, preliminary investigation brings to light that the absentee is friendly with the fourth respondent and it appears that the absentee has left her parental home by her own volition with the fourth respondent. Be that as it may, learned State Additional Public Prosecutor further submits that this is not a maiden episode. There was a replica episode earlier and that led to a complaint being Crime No.1270 of 2020 for an alleged offence under Section 366 A of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Learned State Additional Public Prosecutor submits that the absentee is likely to be located shortly and he also points out that the date of birth of the absentee is 04.04.2005. This means that today the absentee is 17 years 11 months and 19 days. To be noted, in ten days from today, the absentee will be a major.



5. Learned counsel for petitioner also does not enter into any disputation or contestation that there was a replica episode earlier.

6. In the light of narrative thus far, as it is not a case of illegal detention, we do not propose to embark upon a habeas corpus legal drill but we deem it appropriate to say that investigation on merits and in accordance with law qua aforementioned FIR will proceed. We also deem it appropriate to say that as and when the absentee is located she shall be produced before the jurisdictional Magistrate. This Court is informed that the jurisdictional Magistrate is Judicial Magistrate, Ambur.

7. We also remind ourselves of the decision in *Selvaraj Vs. State rep. By the Superintendent of Police and Others* reported in (2018) 3 MLJ (Crl.) 712 wherein a Division Bench of this Court held that a habeas corpus legal drill will not be embarked upon in cases where there is no illegal detention or illegal custody.

8. In the light of the narrative thus far, captioned HCP is disposed of as closed albeit leaving all questions open and preserving all the rights/contentions of the petitioner, fourth respondent, absentee and any other person concerned with the



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aforementioned FIR.

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

Index : Yes / No
Neutral Citation : Yes / No
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To

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Office of District Superintendent of Police,
Tirupathur District.
- 2.The Deputy Superintendent of Police,
Office of district Deputy Superintendent of Police,
Ambur Taluk, Tirupathur District.
- 3.The Inspector of Police,
Omerabad Police Station,
Ambur Taluk, Tirupathur District.
- 4.The Judicial Magistrate,
Ambur.
- 5.The Public Prosecutor,
High Court, Madras.



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and
N.ANAND VENKATESH, J.,**

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