



H.C.P.No.537 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.537 of 2023

M.Jayakirubaa
W/o.Mr.S.Prakash Kumar

.. Petitioner

Vs.

1. The Commissioner of Police
Greater Chennai
Periyar E.V.R. High Road,
Chennai.

2. State
Represented by the Inspector of Police
S-9, Palavanthangal Police Station
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the detenu M.Jayanthan (petitioner's younger brother), aged about 29 years before this Hon'ble Court and set him at liberty.

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For Petitioner : Mr.B.K.Sreenivasan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate

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. The central theme of captioned HCP is disappearance of 'petitioner's brother' [hereinafter be referred to as 'absentee' for the sake of convenience and clarity] from 18.03.2023.

3. Mr.B.K.Sreenivasan, learned counsel for petitioner who is before us submits that absentee is missing from 18.03.2023 and therefore a complaint was lodged by the petitioner with jurisdictional police (second respondent) on 21.03.2023 vide Crime No.66 of 2023.



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4. Issue notice.

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5. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel accepted notice for both respondents. Learned Prosecutor, on instructions from Mr.A.Ammer Ahamed, Assistant Commissioner of Police, St.Thomas Mount, and Mr.N.Balu, Sub-Inspector of Police, S9 Palavanthangal Police Station submitted that investigation was set in motion pursuant to the aforesaid complaint by the petitioner (to be noted, the petitioner is the *de facto* complainant), preliminary investigation brings to light that some individuals have done away with the absentee and therefore the 'First Information Report' ['FIR'] which was lodged as 'man missing' pursuant to the aforementioned complaint was subsequently converted/alterd *inter alia* to one under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and investigation is underway. It is also submitted by the learned Prosecutor that postmortem and other tests are scheduled to be held today at 12.00 noon. It is further submitted by learned Prosecutor that petitioner's spouse and other members of the

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absentee's family were informed about alleged offences and there was a call to identify what according to the prosecution is the remains of absentee but that it is remains of absentee is subjected to disputation by the petitioner. However, we find that reports are awaited.

6. Be that as it may, it is nobody's case that the absentee is in illegal detention or illegal custody. To be noted, support affidavit also does not make such averments. No such allegations or averments were made in the hearing today either. Therefore, the matter on hand does not warrant a typical HCP legal drill. We deem it appropriate to drop the curtains on the captioned HCP but we make it clear that (a) investigation shall proceed in accordance with law on its own merits, (b) all the rights and contentions of the petitioner and/or anyone concerned for absentee are preserved qua the course of investigation, (c) if there are further developments, the rights of the petitioner or anyone concerned for the absentee are preserved qua coming to this Court with a suitable petition or for that matter with a similar / same prayer if there is a twist to the tale and (d) we also make it clear that all rights and contentions of anyone who is accused in the whole exercise



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are also preserved as investigation is underway and in any event they are not before this Court.

7. In the light of the narrative thus far, captioned HCP is disposed of as closed albeit with the aforementioned observations and preserving all the rights and contentions of all concerned in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

10.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

To

1. The Commissioner of Police
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Periyar E.V.R. High Road,
Chennai.
2. State
Represented by the Inspector of Police
S-9, Palavanthangal Police Station
Chennai.
3. The Public Prosecutor
High Court, Madras.

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and
M.NIRMAL KUMAR, J.,

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