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H.C.P.No.781 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MRS JUSTICE **K. GOVINDARAJAN THILAKAVADI**

H.C.P.No.781 of 2023

Madhaiyan

.. Petitioner

VS

1.The Superintendent of Police,
Salem District.

2.The Inspector of Police,
AWPS – Salem Town Police Station,
Salem District.

3.Kaviyarasan

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondent nos. 1 and 2 to produce the petitioner's minor daughter XXX, D/o.Madhaiyan, aged about 17 years, before this Court and handover custody to the petitioner.

For Petitioner : Ms.S.Premakumari

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.N.Narkeeran
for R1 and R2



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ORDER

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

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

2. The crux and gravamen of the captioned HCP is one 'XXX' (we are masking the name and we shall be referring to XXX as 'absentee' for the sake of convenience) not returning home on 03.04.2023. To be noted, concerned for the absentee, father of the absentee has filed the captioned HCP inter-alia saying that the third respondent may be holding absentee in illegal custody.

3. The Honourable Predecessor Bench issued notice and today the petitioner, petitioner's counsel Ms.S.Premakumari, Mr.R.Muniyapparaj, learned State Additional Public Prosecutor on behalf of respondents 1 and 2 (official respondents), Ms.Amsavalli, Head Constable of second respondent police station and the third respondent are present in Court.

4. This Court had the benefit of interactions with the absentee, third respondent and the petitioner (absentee's father) in that order and what emerged from such interactions is as follows:



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(i) The absentee is a minor and she is 17 years of age she having been born in September of 2005;

(ii) The third respondent is also a minor, 17 years of age, he having been born on 25.06.2005. To be noted, the petition (incorrectly) says that the third respondent is 24 years of age;

(iii) The absentee says that she voluntarily went with the third respondent with whom she was friendly, she has now returned home and that she will now go with her father (petitioner in the captioned HCP);

(iv) The medical report of the absentee shows that she is normal;

(v) The Prosecutor submits that the absentee was located on 18.05.2023;

(vi) The petitioner undertakes to be a good caregiver for the absentee and also provide for her further education;

(vii) The third respondent is now working in a mess and intends to look for a better avocation;

(viii) The officers from the All Women Police Station, Salem, who are present submitted that the officers and the investigating officer of second respondent police station have taken all steps to do the needful and the absentee was located on 18.05.2023. Be that as it may the absentee has been located as alluded to supra.

5. In the light of the narrative thus far, as it is not a case of illegal detention or a case of illegal custody we drop the curtains on the captioned HCP. However, this Bench is informed that a case has



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been registered against the third respondent on the basis of complaint dated 03.04.2023 given by the petitioner which has been registered as Crime No.20 of 2023 on the file of All Women Police Station, Salem Town, Salem District originally for an alleged offence under Section 366 I.P.C., now altered as Section 366 IPC, Section 9 of Prohibition of Child Marriage Act, 2006, Section 5(I) r/w 6 of Protection of Children from Sexual Offences Act, 2012. In this regard, considering the trajectory the matter has taken, we are of the view that the prosecution is to necessarily proceed in accordance with the circular memorandum dated 03.12.2022 bearing reference RC. No.009464/Crime-4(3)/2022 issued by the Director General of Police, Chennai as it applies in all fours to the case on hand.

6. Ergo, we dispose of the captioned HCP as closed.

(M.S.,J.) (K.G.T.,J.)
05.06.2023

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



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K. GOVINDARAJAN THILAKAVADI, J.,**

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