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H.C.P.No.835 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.835 of 2023

Shobana

..

Petitioner

Vs.

1. The Commissioner of Police
EVK Sampath Road, Vepery
Chennai – 600 007

2. The Deputy Commissioner of Police
Adayar Range
Chennai District

3. The Assistant Commissioner of Police
Neelangarai Range
Chennai District

4. The Inspector of Police
J-8, Neelangarai Police Station
Crime No.155 of 2023
Chennai District

..

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents 1 and 4

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herein to secure N.Sathiyathan, son of Narasingan, aged 51 years, produce him before this Court for the entrustment of the lawful custody to her wife /petitioner herein or to set him at liberty.

For Petitioner : Mr.G.C.Nelson Britto
for Mr.J.Ramkumar

For Respondents : Mr.E.Raj Thilak
Addl. Public Prosecutor

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. Factual matrix in a nutshell is that petitioner's spouse one Thiru.N.Sathiyathan, aged 51 years, is working as a Line Inspector with 'Tamil Nadu Electricity Board' ['TNEB' for the sake of convenience], Royapettah, now 'Tamilnadu Generation and Distribution Corporation Limited' ['TANGEDCO' for the sake of convenience and clarity]; that the petitioner's spouse shall hereinafter be referred to as 'absentee' solely for the sake of convenience and clarity; that petitioner's spouse is missing from 04.04.2023; that captioned HCP was filed in this Court on 03.05.2023; that



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a Hon'ble Vacation Bench (Hon'ble Division Bench) recorded that learned Additional Public Prosecutor accepted notice and sought time to file a status report; that thereafter a status report dated 21.08.2023 has been filed; that learned counsel for petitioner has been favoured with a copy of this status report and that the captioned HCP is listed today after some listings post 10.05.2023.

3. Today, Mr.G.C.Nelson Britto, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all the four respondents are before us.

4. Adverting to the aforementioned status report dated 21.08.2023 and more particularly paragraph 7 thereat, learned Prosecutor submits that absentee appears to have borrowings and that appears to be the trigger. Be that as it may, more importantly learned Prosecutor submits that this is not a case of illegal detention or unlawful custody. Learned Prosecutor draws our attention to paragraph 13 of the status report, which reads as follows:

'13. I submit that on 02.08.2023, I have issued summon to the defacto complainant / petitioner through in person for appearance on 06.08.2023, but she did not appear before the respondent police.'



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5. To be noted, two successive paragraphs have been assigned paragraph number 13, obviously a typographical error and therefore, we are referring to the first of the paragraph No.13.

6. We make it clear that for the investigation to proceed, it is imperative that the petitioner cooperates with the investigation. In this regard, learned counsel for petitioner who has been favoured with a copy of the status report submits that he has no instructions. Therefore, without expressing any opinion or view one way or the other on paragraph 13, we make it clear that it is imperative that the *de facto* complainant cooperates with the investigation if the investigation is to be continued and carried to its logical end.

7. To be noted, we perused the affidavit in support of the captioned HCP and we find that even in the support affidavit there is no allegation of illegal detention or unlawful custody. Likewise in the complaint given by the petitioner which has been taken on file as FIR No.155 of 2023 dated 08.04.2023 (man missing) also, there is no averment qua illegal custody or unlawful detention. Therefore, noticing that investigation pursuant to FIR



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is proceeding and also noticing the submission of learned Prosecutor that every effort is being taken to locate the absentee, we deem it appropriate to drop the curtains on the captioned HCP i.e., we give a closure to the habeas legal drill on hand. However, we make it clear that the investigation shall proceed on its own merits, in accordance with law, as and when the absentee is located, he shall be produced before the jurisdictional Judicial Magistrate for recording of statement/s with advance intimation to the petitioner. To be noted, we are informed that Judicial Magistrate II, Alandur is the jurisdictional Magistrate.

8. All the rights and contentions of the petitioner to move any other Court/s/Forum/Fora/Authority/Authorities in this regard are also preserved. If any other Court/s/Forum/Fora/Authority/Authorities is/are moved, the matter/s shall be dealt with on its own merits and in accordance with law untrammelled by this order.

Captioned HCP is disposed of as closed albeit with the aforementioned observation and aforementioned preservation of rights.

(M.S.,J.) (R.S.V.,J.)
21.08.2023

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To

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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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