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H.C.P.No.1013 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.1013 of 2023

A.Santhosh Kumar

.. Petitioner

VS

1.The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore City, Coimbatore.

2.State rep. By
The Inspector of Police,
Saravanampatty Police Station,
Saravanampatty, Coimbatore City.

3.Vignesh

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct respondents 1 and 2 to produce the petitioner's wife XXX who is aged about 21 years and his minor child YYY who is aged about 2 years before this Court and set them at liberty.

For Petitioner : Mr.A.Tamilarasan

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
for R1 & R2
Mr.J.Gowthaman for R3



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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 brevity).

2. Factual matrix in a nut shell is that the petitioner's spouse 'XXX' and daughter 'YYY' (we are masking the names and we shall be referring to them as 'first absentee' and 'second absentee' respectively for the sake of convenience) are missing from 29.05.2023; that the petitioner lodged a complaint with the jurisdictional police station i.e., Saravanampatty Police Station, Coimbatore City; that a complaint was registered as Crime No.263 of 2023 on 01.06.2023; that the petitioner apprehending illegal detention of the first and second absentees by third respondent (to be noted, third respondent is private respondent in Kulathur, Pudukottai District) has filed captioned HCP in this Court on 08.06.2023.

3. Issue notice.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents 1 and 2 (official respondent) and Mr.J.Gowthaman (Enrolment No.574/2008) with



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address for service at No.9, Law Chamber, Madras High Court, who is present in Court accepts notice for third respondent (private respondent).

5. With the consent of all the counsel and Prosecutor before us, main HCP was taken up owing to the short point involved and the nature of the matter.

6. Learned Prosecutor representing respondents 1 and 2 is instructed by Mr.J.Saravanan, Inspector of Police, E3 Saravanampatty Police Station, Coimbatore City. Learned Prosecutor, on instructions, submits that the second respondent acted on the complaint, investigation was kick-started and it comes to light that first and second absentees are now with the third respondent in the address given in the cause title in the HCP. It is submitted that the first absentee has gone there on her own volition and it is not a case of illegal detention or custody. However, learned counsel for petitioner submits that he is concerned for the second absentee. Learned Prosecutor, on instructions, submits that the first absentee has given a complaint vide C.No.91/ACP/Cnem/COP-Tapal/2023. The third respondent moved anticipatory bail in this Court vide CrI.O.P. No.13159 of 2023 but the same was withdrawn on 15.06.2023.



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7. Learned counsel for third respondent submits that the first absentee is with him on her own volition and the first absentee wants to continue to be with the third respondent. Learned Prosecutor also submits that this is that scenario that has emerged in the investigation thus far. We deem it appropriate to say that we are not expressing any opinion on these rival contentions and we only take note of the fact that this is not a case of illegal detention and it is only a case of matrimonial discord between the petitioner and first absentee and a collateral tussle between the petitioner and first absentee for custody of the minor child/second absentee. Therefore, it is only appropriate for the petitioner or first absentee to approach appropriate jurisdictional Court/Courts/Forum/Fora for suitable relief i.e., Family Court/GAWA Court or any other suitable forum. To be noted, by GAWA Court, we refer to the Court exercising jurisdiction under The Guardians and Wards Act, 1890.

8. In the light of the narrative thus far, we deem it appropriate to drop the curtains on the captioned HCP holding that it is not a case of illegal detention and it is a case of matrimonial discord between spouses and a tussle between two parents for the custody of a minor. While we drop the curtains on the captioned



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HCP, we make it clear that all the rights and contentions of all the parties concerned viz., petitioner, first absentee, third respondent and any other person concerned with the matter are preserved for being agitated before the Family Court/GAWA Court or any other Court/Courts/Forum/Fora. The jurisdictional Family Court/GAWA Court or any other Court/Courts/Forum/Fora if approached shall deal with the matter uninfluenced and untrammelled by this order which has been made for the limited purpose of HCP legal drill.

9. Captioned HCP is disposed of as closed in the aforesaid manner.

(M.S.,J.) (R.S.V.,J.)
16.06.2023

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

- 1.The Commissioner of Police,
Office of the Commissioner of Police,
Coimbatore City, Coimbatore.
- 2.The Inspector of Police,
Saravanampatty Police Station,
Saravanampatty, Coimbatore City.
- 3.The Public Prosecutor,
High Court, Madras.



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

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