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HCP No.1783 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1783 of 2023

Kalaiselvan

.. Petitioner

Vs.

1. The Superintendent of Police
Office of the Superintendent of Police
Erode – Post & District
2. The Inspector of Police
Kadathur Police Station
Kadathur Post
Erode District

3. Dinakaran ..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 2 to produce the petitioner's wife namely Mrs.Kavi Malar, Female, aged 29 years, wife of Kalaiselvan before this Court from the illegal custody of the 3rd respondent and set her at liberty.

For Petitioner

: Mr.D.Veerasekaran



HCP No.1783 of 2023

For Respondents 1 and 2 : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity].

2. Central theme of the captioned HCP is, petitioner's wife one 'Mrs.Kavi Malar, aged 29 years' [hereinafter 'absentee' for the sake of brevity] is missing from 02.03.2023, a complaint in this regard has been lodged by the petitioner with jurisdictional police (Kadathur Police Station, Erode District) on 05.03.2023, the same has been taken on record as Crime No.80 of 2023 dated 05.03.2023 on the file of jurisdictional police station (to be noted, SHO {Station House Officer} of jurisdictional police station is second respondent in captioned HCP) and the absentee has not been located as yet. Fearing illegal detention of absentee qua third respondent, captioned HCP has been filed in this Court on 04.09.2023.

3. Issue notice.



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4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice on behalf of Respondents 1 and 2 (official respondents) and submits on instructions (instructed by Mr.S.Kandasamy, Sub-Inspector of Police, Kadathur Police Station) that pursuant to the aforementioned complaint dated 05.03.2023 (Crime No.80 of 2023), investigation was kick started, a special team has been formed, a Special Sub-Inspector of Police is heading the team and investigation thus far does not show any trappings of illegal custody or unlawful detention and the jurisdictional police is hopeful of locating the absentee in three weeks from today i.e., by 10.10.2023. This Court is informed that there is one child (daughter) from the wedlock between the petitioner and the absentee, who is studying in school (VII Standard) and is with the petitioner.

5. Let the investigation proceed in accordance with law uninfluenced by this order and let the investigation be carried to its logical end. We make it clear that all the rights of third respondent, petitioner, absentee, anyone concerned with this case are preserved and this is more so as captioned HCP is being disposed of in the Admission Board when private respondent is not before this Court.



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6. On the absentee being located, let the absentee be produced before the jurisdictional Magistrate to record absentee's statement and statements of all concerned with prior intimation to the petitioner (absentee's husband). We are informed that the jurisdictional Magistrate is Judicial Magistrate II, Gobichettipalayam. Registry is directed to communicate forthwith a copy of this order to learned Judicial Magistrate II, Gobichettipalayam.

7. If there is undue delay or if there is any other development, we make it clear that all the rights and contentions of the petitioner, absentee or anyone concerned for the absentee and 3rd respondent are preserved and left open for being raised in collateral or similar proceedings. Further we make it clear that it is open to the petitioner to come back to this Court not only with a similar but even same prayer if the need arises / if there are other developments. All the rights of all concerned are preserved.

8. Captioned HCP is disposed of with the aforementioned observations / directives.

(M.S.,J.) (R.S.V.,J.)
19.09.2023

Index : No
Non-speaking order
Neutral Citation : No
gpa



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To
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1. The Superintendent of Police
Office of the Superintendent of Police
Erode – Post & District
2. The Inspector of Police
Kadathur Police Station
Kadathur Post
Erode District
3. The Public Prosecutor
High Court, Madras.



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

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