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H.C.P.No.1891 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

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

H.C.P.No.1891 of 2023

P.Thimmakkal

.. Petitioner

Vs

1.State rep. By
The Superintendent of Police,
Namakkal District Police Office,
Namakkal District.

2.The Inspector of Police,
Nallur Police Station,
Paramathi Velur (TK),
Namakkal District – 637 003.

3.Gowthem

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the second respondent to produce the body of petitioner's husband Mr.S.Manickam, aged about 65 years before this Court from the illegal custody of the third respondent and set him at liberty.

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For Petitioner : Mr.M.K.Bhoopathy Rajan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R1 and R2

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, convenience and clarity].

2. Factual matrix in a nut shell is that petitioner's spouse one 'Thiru.S.Manickam, aged about 65 years' (hereinafter 'absentee' for the sake of convenience and clarity) is alleged to be in illegal custody of third respondent (to be noted, third respondent is the absentee's son from the absentee's wedlock with his first wife i.e., not HCP petitioner); that in this regard, the petitioner lodged a complaint dated 19.07.2023 inter-alia with the police.

3. As it is alleged that the absentee is in illegal custody of third respondent, issue notice. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for the official respondents i.e., respondents 1 and 2.



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4. Learned Prosecutor is instructed by Mr.N.P.Govindaraju, Special Sub Inspector of Police, Nallur Police Station, Nakammal District.

5. Learned Prosecutor submits that this is a second HCP and in any event acting on the representation when the police went over to the residence of the third respondent, absentee who was present there submitted that he is with the third respondent on his own volition and that absentee and third respondent shall be coming over to the jurisdictional police station on Monday (02.10.2023).

6. Petitioner and learned counsel for petitioner Mr.M.K.Bhoopathy Rajan are present in this Court.

7. In the light of the narrative thus far, we are of the view it will suffice if the statement of absentee is recorded by the jurisdictional Magistrate (we are informed that jurisdictional Magistrate is Judicial Magistrate, Paramathi). We request the learned Magistrate to record the statement of petitioner, third respondent and any other person connected with the matter also.



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8. However, as it is a habeas legal drill, if the absentee makes a statement that he would continue to stay with the third respondent that is the end of the road qua instant habeas legal drill. However, if the absentee makes a statement otherwise, it will be open to the petitioner or anyone concerned for the absentee to approach this Court with a suitable petition.

9. All the rights and contentions of the petitioner, absentee and third respondent and all concerned in this case are preserved for further collateral/connected proceedings in any Court/s/Forum/Fora/Authority/Authorities, if any. We are conscious of the fact that captioned HCP is disposed of in the Admission Board when third respondent is not before us and therefore we reiterate that preservation of rights and contentions is qua third respondent also.

10. Let the jurisdictional police produce the absentee and third respondent with prior intimation to the petitioner before the jurisdictional Magistrate in the course of the ensuing week in any event latest by 06.10.2023.



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11. Captioned HCP is disposed of with the aforesaid observation and preservation of rights in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
29.09.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

P.S.: UPLOAD ON 03.10.2023

To

- 1.The Superintendent of Police,
Namakkal District Police Office,
Namakkal District.
- 2.The Inspector of Police,
Nallur Police Station,
Paramathi Velur (TK),
Namakkal District – 637 003.
- 3.The Judicial Magistrate,
Paramathi.
- 4.The Public Prosecutor,
High Court, Madras.

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

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