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HCP No.2305 of 2022

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.2305 of 2022

K.Kalyanasundaram
S/o.Krishna Gounder

.. Petitioner

Vs.

1. State rep. by
Commissioner of Police
Coimbatore City
Huzur Road, Upplipalayam
Coimbatore - 641 018.

2. State rep. by
Inspector of Police
Saibaba Colony (C-3 Police Station)
No.109, Ramalingam Colony
Saibaba Colony
Coimbatore - 641 011.

3. Naveen
Son of Rajendran

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondents 1 and 2 to produce petitioner's son K.Vivin Prasad, aged 31 years before this Honble



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Court, who is under the illegal Custody of the 3rd respondent and set him at liberty

For Petitioner : Mr.M.Mohamed Saifulla
representing Mr.R.Bharath Kumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R1 and R2
Mr.P.G.Perumal Pandian, for R3

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. Captioned HCP was filed in this Court on 08.11.2022 by the writ petitioner, who is concerned for his son 'Thiru.K.Vivin Prasad, aged 31 years' [hereinafter 'absentee' for the sake of convenience and clarity].

3. In the Admission Board, when the captioned HCP was listed before another Hon'ble Division Bench on 25.11.2022, the following order was made:

'On 14.11.2022, this Court passed the following order :



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"It is the case of the petitioner that his son Vivin Prasad, aged about 31 years, got married to Kiruthika some time in the year 2018 and after marriage, they were living happily; while so, Vivin Prasad joined as a Cashier on 19.11.2021 in Parking Solutions Private Limited, Coimbatore, where, he got acquainted with Naveen, third respondent herein. Alleging that Naveen/R3 had introduced drugs to Vivin Prasad and keeping him in illegal custody, the petitioner has filed the present habeas corpus petition.

2. *Today, V.Rajkumar (Mobile No.94981 71654), Sub-Inspector of Police, C-3, Saibaba Colony Police Station, Coimbatore, is present.*

3. *On instructions, the learned Additional Public Prosecutor submitted that on a complaint given by the petitioner, a case in Saibaba Colony Police Station Crime No.401 of 2022 has been registered on 01.08.2022 for "man-missing" and during investigation, it appears that Vivin Prasad and Naveen/R3 are into a relationship and their whereabouts are not known.*

4. *Under such circumstances, we direct the second respondent/police to produce Naveen/R3 and Vivin Prasad before us on 25.11.2022. The petitioner and Kiruthika shall also be present.*

Post the matter on 25.11.2022."



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2. Today, Mr.C.S.Tamilarasu, Inspector of Police, C-3 Saibaba Colony Police Station, Coimbatore, K.Kalyanasundaram (petitioner), Kiruthika (W/o.Vivin Prasad/detenu), Naveen (3rd respondent) and S.Subiksha (Mobile No.89254 83540) representing THAA, an NGO working in the field of transgenders, having office at No.1/26, Karani Garden 2nd Street, West Saidapet, Chennai 600 015, were present before this Court.

3. When we enquired Naveen, he stated that he was in a gay relationship with Vivin Prasad, but, he does not know his present whereabouts. He also stated that he would co-operate with the police for tracing Vivin Prasad. We apprised him of his right to have an Advocate of his choice, for which, he stated that he has also approached the Tamil Nadu State Legal Services Authority for assistance. Mr.Bharath Kumar, learned counsel for the petitioner served on Naveen, a copy of the affidavit and typed set of papers for filing his counter.

4. We direct the 2nd respondent police to proceed with the investigation and as and when, Vivin Prasad is secured, he shall be produced before the Judicial Magistrate No.VII, Coimbatore, under intimation to the petitioner and Kiruthika. On such production, the learned Magistrate shall pass appropriate orders with regard to the custody of Vivin Prasad.

Post this matter on 16.12.2022.'

4. Aforementioned order captures essential facts that are imperative for appreciating this order and therefore, we do not propose to set out the same again here in this order.



5. Thereafter, there were multiple listings of captioned HCP but proceedings made on 21.02.2023 and 20.06.2023 are relevant and these two proceedings read as follows:

Proceedings dated 21.02.2023:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 24.01.2023.

2. Today, Mr.R.Bharath Kumar, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for respondents 1 and 2 (official respondents) and Mr.P.G.Perumal Pandian, learned counsel for third respondent (private respondent) are before this Court.

3. Learned counsel for petitioner informs us that petitioner and spouse of the absentee are also present in Court.

4. Adverting to earlier proceedings, learned State Additional Public Prosecutor submits that the investigation is underway and they are hopeful of locating the absentee. Learned State Additional Public Prosecutor requests for three weeks time to do the same. Be that as it may learned counsel for third respondent requests for dispensing with the presence of the third respondent in the ensuing listings. We are informed by the learned State Additional Public Prosecutor that the third respondent is co-operating with the investigation. To be noted, this submission is made by the learned State Additional Public Prosecutor on instructions from Special Sub Inspector of Police from C3 Sai Baba Colony Police Station, Coimbatore. We dispense with the personal presence of the third



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respondent in the ensuing listings for the present.

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5. *Let the second respondent file a status report which will also be an ATR (Action Taken Report) in the next listing. Let the second respondent keep the petitioner informed about the progress between today and next listing as regards the significant developments, if any subject to investigation permitting the I.O. (Investigating Officer) to do so. This position is made clear as we do not propose to say anything that would tantamount being construed as interfering in investigation.*

6. *List three weeks hence. List on 17.03.2023.'*

Proceedings dated 20.06.2023:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 17.04.2023.

2. *In the previous proceedings a typographical error has occurred, the last word in the last sentence should read as 'expedited'. It is wrongly typed as 'expedite'. This shall be read as corrigendum /errata qua proceedings made in the previous listing on 17.04.2023. In all other aspects, the 17.04.2023 proceedings shall remain and read the same.*

3. *Mr.V.Ayyappa Raja, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for the official respondents are before us. Learned Prosecutor requests for further time saying that all efforts are being put in by the Special Team to locate the absentee. Prosecutor requests for six weeks time. Request acceded to.*

List six weeks hence. List on 01.08.2023.'



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6. Today, Mr.M.Mohamed Saifulla, learned counsel representing the counsel on record for petitioner, Mr.E.Raj Thilak, learned State Additional Public Prosecutors for respondents 1 and 2 (official respondents) instructed by Mr.J.Saravanan, Inspector of Police, Saibaba Colony Police Station, Coimbatore, third respondent and learned counsel for third respondent Mr.P.G.Perumal Pandian are before this Court.

7. Aforementioned two proceedings made post Admission Board proceedings capture the trajectory the matter has taken and therefore, we do not propose to set out the same again in this order.

8. Adverting to the aforementioned earlier proceedings, both learned counsel (for petitioner and third respondent) and learned Prosecutor before this Court made submissions and what emerged from the submissions are as follows:

(i) Second respondent is taking all possible steps to locate the absentee but it may consume some more time considering the nature of the matter;

(ii) The absentee is clearly a major, who was aged 31



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years on the date of filing of the captioned HCP;

(iii) The absentee is married to one S.D.Kiruthika and there are no children from wedlock between absentee and S.D.Kiruthika;

(iv) Learned Prosecutor, on instructions, submits that third respondent is cooperating with the investigation;

(v) The Jurisdictional Magistrate in the case on hand is learned Judicial Magistrate No.VII, Coimbatore;

(vi) It is not a case of illegal detention or unlawful custody which was the apprehension which impelled the petitioner to file captioned HCP on 08.11.2022 in this Court;

(vii) Learned Prosecutor submits that investigation thus far brings to light that the absentee, third respondent and absentee's spouse were all friendly with each other but we refrain from delving into those aspect of the matter any further as we are preserving rights of all parties in any connected or collateral proceedings;

9. In the light of the narrative thus far, we make the following order:

(a) Captioned HCP is disposed of as closed albeit



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preserving all rights and contentions of the petitioner, absentee, absentee's spouse, third respondent and any other person concerned with the matter for any connected / collateral proceedings in Court/s/Forum/Fora/Authority/ Authorities, if any;

(b) If there are any connected / collateral proceedings, the Court/s/Forum/Fora/Authority/Authorities shall consider the same on its own merits and in accordance with law untrammelled by this order which has been made for the limited purpose of dropping the curtains on the habeas legal drill on hand;

(c) Let the investigation proceed on its own merits and in accordance with law untrammelled by the closure of this captioned HCP;

(d) Let the third respondent continue to cooperate with the investigation;

(e) On absentee being located, let the absentee be produced before the jurisdictional Magistrate for the purpose of recording statements of absentee, petitioner, absentee's



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spouse and / or all concerned;

(f) Though obvious, we make it clear that post recording of such statements also all rights and contentions of all concerned will stand preserved;

(g) Pending investigation also, all rights and contentions of all parties will stand preserved for initiating any other suitable proceedings in any other appropriate Court/s/Forum/Fora/Authority/Authorities;

(h) Though obvious, we make it clear that if there are any other developments touching upon illegal detention or unlawful custody, it is open to any person concerned for absentee to come to this Court with similar / same prayer;

10. Captioned HCP disposed of as closed albeit with the aforementioned observations and preservation of rights in the aforesaid manner.

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

Index : Yes / No
Speaking / Non-speaking order
Neutral Citation : Yes / No
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3. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,

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