



HCP(MD)No.362 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.03.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

H.C.P.(MD)No.362 of 2023

Jeyaseeli

.. Petitioner

Vs.

State rep. by

1.The Commissioner of Police,
Madurai City, Madurai.

2.The Inspector of Police,
Thideer Nagar Police Station
Madurai City.

3.The Inspector of Police,
Thilagar Thidal Police Station,
Madurai City.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to direct the respondents to produce the person or body of the detenu namely Antonymuthu, son of Krishnan aged 42 years before this Court and set him at liberty.

For Petitioner : Mr.S.Muniyandi

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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HCP(MD)No.362 of 2023

ORDER

[Order of the Court was made by **R.SURESH KUMAR, J.**]

This Habeas Corpus Petition has been filed to produce the detenu namely, Antonymuthu, son of Krishnan aged 42 years before this Court and set him at liberty.

2. According to the petitioner, the detenu is missing from the year 2012. After 10 years or more, now a complaint seems to have been given to the respondent police, followed by this habeas corpus petition.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

4. The learned Additional Public Prosecutor pointed out that under Section 108 of the Evidence Act, the burden of proving a person is alive, who has not been heard of for seven years lies only with the person, who affirms it that the man/woman is still alive. When that being so, in view of Section 108 of the Evidence Act, there has been a civil death, after seven



HCP(MD)No.362 of 2023

years, provided nothing has been heard of from the detenu. Thus, it can easily presume that there has been a civil death in respect of the said detenu.

Therefore, at this juncture, whether the petitioner can seek for acting upon the complaint given by her and on this ground, whether the habeas corpus petition can be filed for a direction, he contended.

5. We have considered the submissions made by the learned Additional Public Prosecutor appearing for the respondents. In fact, he has rightly pointed out the legal provision with regard to the civil death after seven years of not heard of about the person/man within the meaning of Section 108 of the Evidence Act. Therefore, we feel that the burden of proof lies only with the petitioner. Therefore, if she has not come forward with any evidence to establish that the detenu is still alive, we are not inclined to entertain this Habeas Corpus Petition. Hence, this petition is dismissed. However, it is open to the petitioner to work out her remedy in the manner known to law, if she decided to do so.

(R.S.K.,J.) (K.K.R.K.,J.)
16.03.2023

Index : Yes/No

Internet : Yes

RR



HCP(MD)No.362 of 2023

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- 3.The Inspector of Police,
Thilagar Thidal Police Station,
Madurai City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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HCP(MD)No.362 of 2023

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HCP.(MD)No.362 of 2023

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