

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.418 of 2023

Esakkidurai

... Petitioner / Father of the Detenue

Vs.

1.The Superintendent of Police,
Thenkasi, Thenkasi District.

2.The Deputy Superintendent of Police,
Alangulam, Thenkasi District.

3.The Inspector of Police,
Kadayam Police Station, Thenkasi District.
(Crime No.88 / 2023)

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents 1 to 3 to produce the body or person of the petitioner's son, namely, Esakkimuthu @ Manoj, aged about 20 years and set him at liberty.

For Petitioner : Mr.R.Velmurugan
For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner, seeking production of his son, namely, Esakkimuthu @ Manoj, aged about 20 years, has filed this Habeas Corpus Petition.

2.The learned counsel appearing for the petitioner would submit that the petitioner's son, namely, Esakkimuthu @ Manoj, was missing from 12.03.2023 and on the basis of the complaint given by the petitioner, the 3rd respondent had registered the case in Crime No.88/2023 on 15.03.2023 as 'Man missing' and after a week time also, no progress has been shown and whether the detainee has been alive or not is not known and the whereabouts of the detainee is also not known. Therefore, having no other option, the petitioner claimed to have filed this Habeas Corpus Petition. Hence, the learned counsel for the petitioner seeks indulgence of this Court.

3.The learned Additional Public Prosecutor appearing for the respondents, by relying upon the earlier order of this Court, would submit that insofar as the case, where there is a man missing or woman missing registered by the Police is concerned, it is for the Police to investigate the matter and deduct the missing man or woman. For the every man missing or woman missing case, if the people are permitted to file Habeas Corpus Petition invoking Article 226 of Constitution of India as if the missing man or woman is in illegal custody, that is nothing but abuse of process of law in filing such Habeas Corpus Petition. Therefore, the learned Additional Public Prosecutor for the respondents seeks indulgence of this Court.

4.We have considered the submissions made on either side and perused the materials available on record.

5.Even in the averment made in the affidavit, it has not been stated that the detinue has been in illegal custody or illegal detention at the hands of anyone.

6.The man missing complaint had already been given, which has been registered in Crime No.88 of 2023 and according to the learned Additional Public Prosecutor for the respondents, the Police concerned is investigating the matter.

7.In this regard, if any progress is not come on the expected line, it is open to the petitioner to approach this Court by invoking appropriate provisions of Cr.P.C., to seek for a direction to monitor the said investigation and to issue necessary direction to that effect in order to ensure that the investigation is going on in the expected line and soon the missing person ie., the detainee would be found out.

8.In this regard, the said remedy, which is available to the petitioner can very well be worked out by the petitioner. Hence, we are of the view that this Habeas Corpus Petition can be rejected on the aforestated ground of course with the liberty to the petitioner.

9.As a result, this Habeas Corpus Petition is dismissed with liberty to the petitioner to file an appropriate petition, seeking a direction pursuant to the case registered in Crime No.88 of 2023 dated 15.03.2023 on the file of the 3rd respondent for appropriate relief.

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

29.03.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

MYR

To

1.The Superintendent of Police,

Thenkasi, Thenkasi District.

2.The Deputy Superintendent of Police,

Alangulam, Thenkasi District.

3.The Inspector of Police,

Kadayam Police Station, Thenkasi District.

4.The Additional Public Prosecutor,

Madurai Bench of Madras High Court,

Madurai.

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