



HCP(MD)No.1066 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.08.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.1066 of 2023

A.Kaladevi

.. Petitioner

Vs.

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

2.The Inspector of Police,
Kandamanur Police Station,
Kandamanur, Theni District
Crime No.352/2023

.. Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the respondents to produce the person of body of detenu namely Alagumurugan son of Kulanthaivelu aged about 48 years, the petitioner's husband before this Court and set him at liberty.



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For Petitioner : Mr.K.Althaf Sheriff for
M/s.Ajmal Associates
For Respondents : Mr.RMS.Sethuraman
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH, J.)

The petitioner is the wife of Alagumurugan, S/o.Kulandhaivelu, who is aged about 48 years. According to the petitioner, her husband had gone missing from 20.11.2015 and her complaint to the jurisdictional police has been registered in Crime No.352 of 2015 under the caption, 'man missing'. Since there was no sufficient progress in the investigation, she had filed the present Habeas Corpus Petition.

2.At the outset, we are of the view that the present Habeas Corpus Petition is not only misconceived, but an abuse of process of law. Article 226 of the Constitution of India empowers the High Court to issue a writ in the nature of Habeas Corpus for the enforcement of any right conferred under Part III of the Constitution dealing with fundamental rights. The scope and ambit of the jurisdiction of the High Court while dealing with the



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writ of Habeas Corpus has been time and again dealt with by the Hon'ble Supreme Court as well as various High Courts of the Country by holding that a Habeas Corpus Petition would not be maintainable in respect of lawful detention or a custody imposed in accordance with law, such as in pursuance of validly imposed sentence of imprisonment. In one such case of Home Secretary (Prison) and others v. H.Nilofer Nisha [2020 (14) SCC 161], this ratio was held in the following manner:

“13. It is a settled principle of law that a writ of habeas corpus is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention.

...

At the same time, the law is well established that a writ of habeas corpus will not lie and such a prayer should be rejected by the Court where detention or imprisonment of the person whose release is sought is in accordance with the decision rendered by a court of law or by an authority in accordance with law.



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...

16. A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin phrase habeas corpus is ‘to produce the body’, over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This writ is many times used even in cases of custody of children. Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under



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detention without any authority of law .”

The aforesaid extract is self-explanatory. Thus, unless there are substantial materials before this Court to establish that the detenu is in unlawful custody or detention by any authority or persons, a writ in the Habeas Corpus Petition cannot be issued and thus, the writ petition itself will not be maintainable.

3. Admittedly, it is not the case of the petitioner that the alleged detenu is in the unlawful or illegal custody of a third party. On the other hand, the grievance as projected in this Habeas Corpus Petition seems to be the inaction on the part of the jurisdictional police in tracing/securing the missing person under the case registered by them. It is needless to point that such a grievance can be redressed under Section 482 Cr.P.C. and invocation of Article 226 of the Constitution of India will amount to an abuse of process of law. In the light of such a finding, we are of the view that exemplary costs ought to be imposed on the petitioner.

4. In the light of the above findings, this Habeas Corpus Petition is dismissed with a direction to the petitioner to pay cost of Rs.10,000/-



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(Rupees ten thousand only) to the credit of *Current Account No. 7567821433, (IFSC Code: IDIBI000H040), in the Indian Bank, High Court Branch, Madurai Bench of Madras High Court, Madurai, towards Kalaigarn Centenary Library, on or before 31.08.2023.*

5. Post on 01.09.2023, 'for recording compliance'.

(M.S.R.,J.) (M.N.K.,J.)
24.08.2023

NCC :Yes / No
Internet : Yes

RR

To

- 1.The Superintendent of Police,
Theni District, Theni.
- 2.The Inspector of Police,
Kandamanur Police Station,
Kandamanur, Theni District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR,J.

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