



HCP(MD) No.1091 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Criminal Original Jurisdiction

Tuesday, the Nineteenth day of September Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice M.NIRMAL KUMAR

HCP(MD) No.1091 of 2023

SAKUNTHALA

... PETITIONER/MOTHER OF THE DETENUE

Vs

1 THE COMMISSIONER OF POLICE
TRICHY CITY,
TRICHY

2 THE INSPECTOR OF POLICE
PALAKARAI POLICE STATION,
TRICHY DISTRICT.

... RESPONDENT

Prayer in HCP(MD) No.1091 of 2023:

Hebeas Corpus Petition filed under Article 226 of Constitution of India, to
direct the respondents 1 and 2 to produce the body or person of the detenue by



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name, Basker S/o Late Ananthan, Aged about 33 years and produce him before this court and set him at liberty and pass such further or other orders.

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ORDER : This petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.A.Balakrishnan, Advocate for the petitioner and Mr.RMS.Sethuraman, Additional Public Prosecutor for the respondents(s) this court made the following order:-

[Order of the Court was made by M.S.RAMESH,J.]

By an earlier order dated 30.08.2023, we had passed a detailed order by holding that the present Habeas Corpus Petition is not maintainable and that the petitioner is liable to pay a cost of Rs.5000/-. The said order reads as follows:

“The petitioner is the mother of Basker, S/o.Late Ananthan, who is aged about 33 years. According to the petitioner, her son had gone missing from 01.08.2023 and her complaint to the jurisdictional police has been registered in Crime No.1256/2023 dated 02.08.2023 under the caption, 'man missing'. Since there was no sufficient progress in the investigation, she had filed the present Habeas Corpus Petition.



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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 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



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private detention.

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...

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.

...

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



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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 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



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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.5,000/- (Rupees Five 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 Kalaaignar Centenary Library, on or before 07.09.2023.

5. Post on 08.09.2023, 'for recording compliance'.

2. Today, the learned counsel for the petitioner has filed a cost memo, evidencing that the cost imposed by us on 30.08.2023 has been paid and the proof of



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such payment has also been produced before us. The said memo is recorded. In view of the same, no further orders are required to be passed in the present Habeas Corpus Petition.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/09/2023

Sub Assistant Registrar(CS)

TO

- 1 THE COMMISSIONER OF POLICE
TRICHY CITY, TRICHY
- 2 THE INSPECTOR OF POLICE
PALAKARAI POLICE STATION, TRICHY DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI



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ORDER DATED : 19/09/2023

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ORDER
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Giving direction and etc.
as stated within.

DL/(26.09.2023)/ 8P/4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.