



H.C.P(MD)No.1240 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.11.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.1240 of 2023

K.Subramani

.. Petitioner/Father of the detenu

VS

- 1.The Commissioner of Police,
Madurai,
Madurai District.
- 2.The Inspector of Police,
S.S.Colony Police Station,
Madurai District.
- 3.M.Yesu @ Karuappasamy
- 4.The Dean,
Government Rajaji Hospital,
Madurai.
- 5.The District Child Protection Officer,
Child Welfare Committee,
Madurai District.
(Collectorate Campus).



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6.Lifeline Trust Specialised Home,
52, Raja Ganapathy Street,
Chinna Tirupathy,
Salem – 636 008.

.. Respondents

(R4 to R6 are *suo motu* impleaded vide order of
the Court dated 17.11.2023 in H.C.P(MD)No.1240 of 2023)

Prayer:- Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of Habeas Corpus directing the second
respondent to produce the body or person of the petitioner's minor
daughter detenu XXXX, aged 17 years, D/o.K.Subramani before this
Court and handover the custody to the petitioner.

For Petitioner : Mr.L.Shaji Chellan

For Respondents 1, 2, 4 & 5 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

: Ms.B.Poongkhulali
(Amicus Curiae)

ORDER

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

The case on hand which started as a Habeas legal drill is now
anchored on a girl's right of reproductive choice.



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2.We deem it appropriate to reproduce the proceedings made in the previous listings in chronological order so that this order captures the trajectory the matter has taken before us. To be noted, previous proceedings / orders capture the crux and gravamen of the case on hand also. The proceedings/orders made in the previous listings on 13.10.2023, 06.11.2023, 08.11.2023, 17.11.2023 and 20.11.2023 are as follows:

Proceedings dated 13.10.2023:

'H.C.P.(MD)No.1240 of 2023

M.SUNDAR., J.

and

R.SAKTHIVEL., J.

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for brevity) has been filed in this Court on 10.10.2023.

2. Factual matrix in a nutshell is that petitioner's daughter 'xxxxx' [we are masking the name of the petitioner's daughter and we shall be referring to her as 'absentee' for the sake of convenience] was missing from 29.06.2023; that petitioner lodged a complaint in S.S.Colony Police Station, Madurai City and the same was taken on file vide FIR No.881 of 2023 [girl missing]; that fearing illegal detention / unlawful custody by the third respondent [to be noted, third respondent is a private respondent], captioned HCP has been filed.



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3. In the Admission Board, Mr.V.Santhakumaresan, learned counsel on record for petitioner, petitioner along with his spouse are present.

4. Learned counsel for HCP petitioner reiterated the aforementioned facts.

5. Issue notice to official respondents [respondents 1 and 2].

6. Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor is instructed by Ms.M.Perarasi, Sub Inspector of Police, S.S.Colony Police Station, Madurai. Learned State Additional Public Prosecutor submitted that absentee has been located and she is in Court. Therefore, this Bench had an interaction with the absentee and the following points emerged:

i) absentee is friendly with third respondent;

ii) absentee has gone out of her parental home on her own will and volition i.e., voluntarily;

iii) absentee had gone over to the third respondent's parent's house in Kerala;

iv) absentee does not want to go to her parental home;

v) absentee, who is 17 years and 3 days short of 1 month as of today, wants to make a choice about her matrimony on attaining majority but does not want to stay with her parents; and

vi) absentee has set out certain reasons for not wanting to stay in her parental home but we refrain from recording all that as we find that it is best left open;

7. In the light of the narrative thus far, which captures what unfurled in the hearing today, we find it appropriate to make the following order:

i) absentee shall now be lodged for the present in St.Patrick's Home, Near Serungeri Madam, Bye-pass Road, Madurai City and learned State Additional Public Prosecutor shall facilitate the same by availing the services of One Stop Centre, Madurai, which is a Government Agency under the Ministry of Women and Child Development, Union of India,



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funded by NIRBAYA Fund;

ii) second respondent shall take the absentee for medical examination to the Government Hospital and obtain a report which shall be placed before us in the next listing; and

iii) until next listing / until further orders, absentee will remain in St.Patricks Home, Near Serungeri Madam, Bye-pass Road, Madurai City.

8. List one week hence.

9. List under the cause list caption 'FOR REPORT' on 20.10.2023.'

Proceedings dated 06.11.2023:

'H.C.P.(MD)No.1240 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL., J.

ORDER

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

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 13.10.2023.

2. Pursuant to earlier proceedings dated 13.10.2023 and more particularly sub-paragraph (ii) of paragraph 7 thereat, a medical report in a sealed envelop was placed before us.

3. This Court, having perused the medical report, is of the view that it may be necessary to get further inputs from the Doctor, who has given the medical report viz., Dr.Renuka Devi, Civil Assistant Surgeon, Government Rajaji Hospital, Madurai. This Court requests the Medical Officer to be present in person before this Court on 08.11.2023 at 2.15 p.m. Learned State Additional Public Prosecutor is requested to inform through the Investigating Officer viz., the second respondent, so that presence of the Medical Officer is ensured.

4. List on 08.11.2023 at 2.15 p.m. The absentee will continue to be in



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the same home ie., St.Patricks Home, Near Serungeri Madam, Bye-pass Road,
Madurai City.'

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Proceedings dated 08.11.2023:

'H.C.P(MD)No.1240 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

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

*Read this in conjunction with and in continuation of earlier
proceedings made in the previous listings on 13.10.2023 and 06.11.2023
which read as follows:*

13.10.2023:

'H.C.P.(MD)No.1240 of 2023

M.SUNDAR., J.

and

R.SAKTHIVEL., J.

ORDER

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from 29.06.2023; that petitioner lodged a complaint in S.S.Colony Police*



Station, Madurai City and the same was taken on file vide FIR No.881 of 2023 [girl missing]; that fearing illegal detention / unlawful custody by the third respondent [to be noted, third respondent is a private respondent], captioned HCP has been filed.

3. In the Admission Board, Mr.V.Santhakumaresan, learned counsel on record for petitioner, petitioner along with his spouse are present.

4. Learned counsel for HCP petitioner reiterated the aforementioned facts.

5. Issue notice to official respondents [respondents 1 and 2].

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- i) absentee is friendly with third respondent;
- ii) absentee has gone out of her parental home on her own will and volition i.e., voluntarily;
- iii) absentee had gone over to the third respondent's parent's house in Kerala;
- iv) absentee does not want to go to her parental home;
- v) absentee, who is 17 years and 3 days short of 1 month as of today, wants to make a choice about her matrimony on attaining majority but does not want to stay with her parents; and
- vi) absentee has set out certain reasons for not wanting to stay in her parental home but we refrain from recording all that as we find that it is best left open;

7. In the light of the narrative thus far, which captures what unfurled in the hearing today, we find it appropriate to make the following order:

- i) absentee shall now be lodged for the present in St.Patrick's Home, Near Serungeri Madam, Bye-pass Road, Madurai City and learned State



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Additional Public Prosecutor shall facilitate the same by availing the services of One Stop Centre, Madurai, which is a Government Agency under the Ministry of Women and Child Development, Union of India, funded by NIRBAYA Fund;

ii) second respondent shall take the absentee for medical examination to the Government Hospital and obtain a report which shall be placed before us in the next listing; and

iii) until next listing / until further orders, absentee will remain in St.Patricks Home, Near Serungeri Madam, Bye-pass Road, Madurai City.

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06.11.2023:

'H.C.P.(MD)No.1240 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL., J.

ORDER

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Rajaji Hospital, Madurai. This Court requests the Medical Officer to be present in person before this Court on 08.11.2023 at 2.15 p.m. Learned State Additional Public Prosecutor is requested to inform through the Investigating Officer viz., the second respondent, so that presence of the Medical Officer is ensured.

4. List on 08.11.2023 at 2.15 p.m. The absentee will continue to be in the same home ie., St.Patricks Home, Near Serungeri Madam, Bye-pass Road, Madurai City.'

2.The aforementioned proceedings are tell-tale qua crux and gravamen of the matter and trajectory the matter has taken thus far.

3.Pursuant to our earlier proceedings dated 06.11.2023 Dr.M.Renuga Devi, DGO, Assistant Surgeon, Obstetrics and Gynecology Department, Government Rajaji Hospital, Madurai was before us and we had an interaction with the Doctor. Before we set out what transpired in the interaction, it is necessary to record that Mr.V.Santhakumaresan, learned counsel for petitioner, petitioner, petitioner's spouse (Munieswari) (parents of absentee), Mr.R.Meenakshi Sundaram, learned State Additional Public Prosecutor instructed by Ms.R.Sangeetha, Inspector of Police, All Women Police Station, South, Madurai and absentee are in Court.

4.From our interaction with the aforementioned Medical Officer (Assistant Surgeon), the following points emerged:

'(i) The medical report before us means that there is a viable fetus but further medical investigation, particularly by a Radiologist, is necessary; and

(ii) The general health of the absentee is good i.e., mental health and normal health and there are no abnormalities or deficiencies.'



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5.In the light of the facts and circumstances of the case, we deem it appropriate to give the following directions:

'(i) The Dean of the Government Rajaji Hospital, Madurai shall constitute a team of Doctors which will include a Gynecologist, a Paediatrician or Radiologist/Sonologist, a Psychiatrist and any other person deemed appropriate by the Dean;

(ii) The aforementioned team is requested to examine i.e., medically examine, interact and counsel the absentee as well as her parents i.e., petitioner and his spouse;

(iii) Ms.B.Poongkhulali [Enrollment No.1373/2009], learned counsel, with address for service at M-1, Vadhula, 18, Brindavan Street, Mylapore, Chennai – 600 004, is appointed as Amicus in this matter and it is open to the team of Doctors to interact with Amicus before giving us a report; and

(iv) We requisition a report from the team of Doctors, which shall be placed before us on 17.11.2023 at 02.15 p.m.'

6.List on 17.11.2023 at 02.15 p.m. The absentee will continue to be in the same home i.e., St.Patricks Home, Near Serungeri Madam, Bypass Road, Madurai City until further orders.'

Proceedings dated 17.11.2023:

'H.C.P.(MD)No.1240 of 2023

M.SUNDAR., J.

and



H.C.P(MD)No.1240 of 2023

R.SAKTHIVEL., J.

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ORDER

*[Order of the Court was made by **M.SUNDAR., J.**]*

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 08.11.2023, which reads as follows:

'H.C.P(MD)No.1240 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

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and

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2. Factual matrix in a nutshell is that petitioner's daughter 'xxxxx' [we are masking the name of the petitioner's daughter and we shall be referring to her as 'absentee' for the sake of convenience] was missing from 29.06.2023; that petitioner lodged a complaint in S.S.Colony Police Station, Madurai City and the same was taken on file vide FIR No.881 of 2023 [girl missing]; that fearing illegal detention / unlawful custody by the third respondent [to be noted, third respondent is a private respondent], captioned HCP has been filed.

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Ministry of Women and Child Development, Union of India, funded by
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8. List one week hence.

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06.11.2023:

'H.C.P.(MD)No.1240 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL., J.

O R D E R

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H.C.P(MD)No.1240 of 2023

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(iv) We requisition a report from the team of Doctors, which shall be placed before us on 17.11.2023 at 02.15 p.m.'

6.List on 17.11.2023 at 02.15 p.m. The absentee will continue to be in the same home i.e., St.Patrick's Home, Near Serungeri Madam, Bye-pass Road, Madurai City until further orders.'

2.The events that unfurled in the hearing today are as follows:

i) There is a change of Counsel for the petitioner. In place of Mr.V.Santhakumaresan and his colleague, Mr.L.Shaji Chellan and his colleague Mr.M.Barathi have come on record.

ii) Present Counsel on record for petitioner, petitioner Mr.K.Subramani, petitioner's spouse Mrs.S.Muneeswari, second respondent Ms.R.Sangeetha, Inspector of Police, All Women Police Station, South, Madurai, Mr.R.Meenakshi Sundaram, learned State Additional Public Prosecutor representing respondents 1 and 2 and absentee are present.

3.Pursuant to our earlier order a medical team has been constituted by the Dean of the Government Rajaji Hospital, Madurai and proceedings signed on 10.11.2023 bearing reference ஐ.க.எண்.19839/௨௦௨௩/J6/2023 has been e-mailed to this Court and the same is as follows:



H.C.P(MD)No.1240 of 2023

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17.11.23

த.க.எண்:19829/பொது/2023.

அரசு துள்ளி மருத்துவமனை,
மதுரை-30.
தாதி: 11.2023.

பொது: பொது அரசு துள்ளி மருத்துவமனை, மதுரை-30. சென்னை உயர்நீதிமன்ற மதுரை கிளை - வழக்கு எண்:HCP(MD)No.1240 of 2023 தொடர்பாக மனுதாரர் குற்றம் தவறு மகள் மகன் ஆகியோரை மருத்துவப் பரிசோதனை செய்ய மருத்துவ வல்லுநர் குழு அமைத்தல் குறிப்புக் கருத்துரை சமர்ப்பித்து தொடர்பாக குறிப்புரை.

பாற்றல்: 1. சென்னை உயர்நீதிமன்ற மதுரை கிளை, வழக்கு எண்:HCP(MD)No.1240 of 2023
2. மதுரை அரசு துள்ளி மருத்துவமனை முதல்கவர் அவர்களது குறிப்பை நாள்-01-2023

பாற்றல் 1ல் எடுத்துக் கொள்ள உபநிதிமன்ற மதுரை கிளை, வழக்கு எண் HCP(MD)No.1240 of 2023 தொடர்பாக மனுதாரர் மற்றும் அவரது மகள் (absent) or Absentee ஆகியோரை மருத்துவப் பரிசோதனை செய்ய சீர்தகுத்துவமைப்பில் a. செயல்தகுது, b. பரிசோதனை, Redaction/Redactionist, a. Redactionist ஆகியோர் அடங்கிய மருத்துவ வல்லுநர் குழு அமைத்தல் அதன் கருத்துரையானது 17.11.2023-க்குள் வழங்கிக் கொள்ள வேண்டுகின்றது.

மேற்படி திட்டப்போது குறித்து பாற்றல் 1ல் முதல்கவர் குறிப்புகளில் கீழ்க்கண்ட 5 பேர் அடங்கிய மருத்துவ வல்லுநர் குழுவான அமைத்தல் மருத்துவ வல்லுநர் குழு அமைத்தல் குறிப்பைக் குறிப்பிட்டுள்ளதில் எவ்வளவு கீழ்க்கண்ட மருத்துவக் குழுவின்மேல் 15.11.2023 (புதிதானிழைப்பு) அன்று காலை 10.30 மணிக்கு மனுதாரர் மற்றும் அவரது மகள் (absent) or Absentee ஆகியோரை மருத்துவப் பரிசோதனை செய்ய அமைத்தல் திட்டப்போதுவமைப்பில் உள்ள மகப்பேறுபாக துறையில் 6 வது மாடியில் குழுவின் ஆலோசி மருத்துவப் பரிசோதனை செய்ய தயக்கம் கருத்துரையானது 15.11.2023-க்குள் சீர்தகுத்துவமைப்பில் சமர்ப்பித்துவாறு துள்ளி குறைவு ஆகவமைப்புகின்றது.

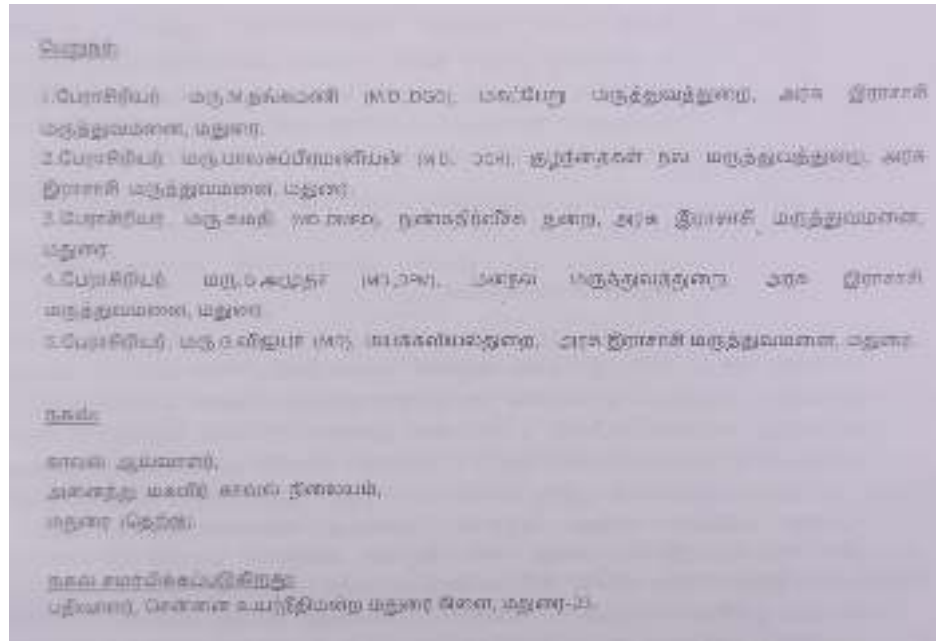
வ.எண்	மருத்துவ வல்லுநர்களின் பெயர்கள்	மருத்துவக் குழு	நுதலகள்
1	மேற்குறிப்பிட்டு மருத்துவமனை 01.0.0031	தலைவர்	மகப்பேறு மருத்துவத்துறை
2	மேற்குறிப்பிட்டு மருத்துவமனை 01.0.0031	உறுப்பினர்	குழந்தைகள் நல மருத்துவத்துறை
3	மேற்குறிப்பிட்டு மருத்துவமனை 01.0.0031	உறுப்பினர்	தொண்டிமேல் துறை
4	மேற்குறிப்பிட்டு மருத்துவமனை 01.0.0031	உறுப்பினர்	மருத்துவ மருத்துவத்துறை
5	மேற்குறிப்பிட்டு மருத்துவமனை 01.0.0031	உறுப்பினர்	மருத்துவமருத்துவ

(முதல்கவர்)
சென்னை துள்ளி மருத்துவமனை-30



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4.A memo dated 17.11.2023 from the Amicus and a report from the team of doctors [examination on 15.11.2023 and 16.11.2023 under cover of letter dated 17.11.2023] are before us.

5.Ideally the medical professionale from the Government Rajaji Hospital, preferably a member of the team who examined the absentee should have been present today but unfortunately that is not the case. Therefore, we are impleading the Dean and there shall be a directive to the Dean and one member of the team to be present in the Court in the next listing.

6.The Dean, Government Rajaji Hospital, Madurai, the District child Protection Officer, Child Welfare Committee, Madurai District [Collectorate Campus] and Lifeline Trust Specialised Home, 52, Raja Ganapathy Street, Chinna Tirupathy, Salem – 636 008 for convenience are suo motu impleaded as respondents 4 to 6.



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7. In addition to all the parties present today, the Dean of Government Rajaji, Madurai together with two doctors from the team who examined the absentee, the District Child Protection Officer, Madurai, the senior most decision making authority of St.Patrick's Home, Near Serungeri Madam, Bye-Pass Road, Madurai and a senior personnel from Lifeline Trust Specialised Home, who can apprise and take decisions are to be present in Court in the next listing. The second respondent to ensure the presence of a senior personnel from Lifeline Trust Specialised Home through the Child Protection Officer, Madurai.

8. List on 20.11.2023 at 04.00 p.m.'

Proceedings dated 20.11.2023:

'H.C.P.(MD) No.1240 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

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

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 17.11.2023.

2. Today, Mr.R.Sundar, District Child Protection Officer, Madurai and Ms.S.Suganya, Project Director, Lifeline Trust Specialised Home, Chinna Thirupathy, Salem District, are present. Others who were directed to be present will also be here is learned Prosecutor's say.

3. Mr.L.Shaji Chellan, learned counsel for petitioner, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor and Ms.R.Sangeetha, Inspector of Police, All Women Police Station – South, Madurai District, are also present. However, we are of the view that third respondent and his parents also may have to be present in Court.

4. List for a conclusive hearing (peremptory listing) on 28.11.2023 (Tuesday) at 12:00 Noon (In-camera proceedings).'



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WEB COPY 3. The aforementioned proceedings/orders shall now be read as an integral part and parcel of this final order. This also means that the short forms, short references and abbreviations used in the previous proceedings/orders shall continue to be used in the instant final order also for the sake of convenience and clarity.

4. Today, petitioner represented by counsel Mr.L.Shaji Chellan, petitioner's spouse, Mr.R.Meenakshi Sundaram, State Additional Public Prosecutor on behalf of respondents 1, 2, 4 and 5 instructed by second respondent (Ms.R.Sangeetha, Inspector of Police, All Women Police Station/South, Madurai City), third respondent along with his mother (Ms.M.Vasanth), absentee, the team of Doctors constituted by Dr.Srilatha, Residential Medical Officer, Government Rajaji Hospital, Madurai, Dr.Sumathi, M.D., DMRD, Professor of Radiology, Government Rajaji Hospital, Madurai and Dr.M.Thangamani M.D., D.G.O, Professor, Department of DGO, Government Rajaji Hospital, Madurai, Mr.R.Sundar, District Child Protection Officer, Child Welfare Committee, Madurai District (fifth respondent) and Ms.Suganya, Project



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Director from 'Lifeline Trust Specialised Home' [hereinafter 'LTSH' for the sake of convenience and clarity] in Chinnathiruppathi, Salem (sixth respondent) are before us. Mrs.Amutharani, Senior Counsellor, One Stop Centre, Madurai and Sisters from St.Patrick Isaac Home (Sr.Loyola – Director and Sr.Lourdhu Mary – Programme Co-ordinator) are also before us.

5.Be that as it may, Ms.Poongkhulali, learned Amicus was before us with a compilation of case laws qua obtaining legal position (*inter-alia* regarding the position of minor in such cases) and case laws pertaining to reproductive choice.

6.We had the benefit of hearing learned counsel for petitioner, learned Prosecutor and learned Amicus at length.

7.We also had the benefit of interaction with petitioner and his spouse (parents of absentee), the Doctors from the team, fifth respondent – District Child Protection Officer, Ms.Suganya from LTSH, absentee and third respondent with his mother.



8.Following points emerged from the aforementioned hearing and interactions:

(i) Absentee is pregnant, as of today she is good enough to continue the pregnancy and deliver. The vital parameters are normal and she has not been diagnosed with any mental illness. The absentee is clear that she wants to continue with her pregnancy and deliver;

(ii) Petitioner and his spouse (parents) said they are ready to embrace the absentee and take her back home but the absentee is clear that she does not want to go with her parents. Parents of the absentee submit that they would embrace her as and when there is change of heart, if that be so;

(iii) Absentee wants to continue her tie with third respondent;

(iv) Third respondent and his mother assured that they will provide whatever support is required and wait for the absentee to attain majority in September of 2024 after which the absentee can make her choice;



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(v) From the opinion of the Doctors, we find that (as alluded to supra), absentee has not been diagnosed with any mental illness, her thought process is cogent and her ability to form a judgment is good;

(vi) Ms.S.Suganya, Project Director, LTSH submits that sixth respondent is a Government aided entity. Interestingly, it is a Non-Governmental Organization (NGO) aided by the Government. Proceedings of the Commissionerate of Social Defence dated 01.12.2020 bearing reference D.dis.Proc.No.10225/D2/2020 wherein the Government has made proceedings for the sixth respondent institution LTSH to admit a maximum of 17 girls has been placed before us. LTSH has been functioning from 2020, it has thus far dealt with 92 children/girls with 56 deliveries. At the moment, out of the capacity estimated by the Government vide 01.12.2020 being 17, they have 13 inmates and 7 babies;

(vii) LTSH has infrastructure and experience to house the absentee, take care of her pregnancy/delivery



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and also house her till she attains majority. This would be a voluntary activity and absentee or no one on her behalf need to bear any expenses; and

(viii) The fifth respondent assured us that he would provide requisite and adequate support as and when required.

9. We now proceed to set out a broad overview of the legal position in cases of this nature and the same are as follows:

(i) The lead case is *V.Krishnan's* case [*V.Krishnan Vs. G.Rajan alias Madipu Rajan* reported in *1994-1-L.W. 89*].

In this case, one parent had made an application for Medical Termination of Pregnancy (MTP), the same was repelled by the Court and the most relevant portions of this Judgment which has been penned after taking into account view points of several religious scriptures, English and American Laws are articulated in paragraphs 43, 48 and 51 to 54, conclusion and directives are contained in paragraph 55 which are as follows:



'43.Learned counsel for the petitioner places considerable reliance on the provisions of Sub-section (4)(a) and (4)(b) of Section 3. It is contended by him that Sub-section (4)(p) is subject to the provisions of Sub-section (4)(a) and in the case of a minor, it is only the guardian who can decide whether the pregnancy should be terminated or not. According to him, the application of Sub-section 4 (b) is excluded by its own language if the pregnant woman has not attained the age of eighteen. We are unable to accept this contention. The entire scheme of the Act shows that the provisions thereof can be invoked only by the pregnant woman. If she happens to be a minor, the registered medical practitioner, who is approached for terminating the pregnancy must take care to get the consent of the guardian of the minor in writing. Sub-section (4)(a) can never be understood as dispensing with the consent of the pregnant woman if she is below 18 years of age. The provision is only intended to help the registered medical practitioner to take into account all the relevant facts and circumstances as set out in Section 3 so as to decide whether the continuance of the pregnancy will involve any of the risks mentioned in the Section. For example, Sub-section (3) requires the medical practitioner to take into account the pregnant woman's actual or reasonably foreseeable environment while determining the question whether the continuance of the pregnancy would involve such risk as is mentioned in Sub-section (2). In the case of a minor, it is, therefore, necessary for the medical practitioner in order to ascertain the relevant facts under Sub-section (3) to notify the guardian of the minor and get his written consent.

44.....

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48. The learned Additional Public Prosecutor rightly points out that the Constitution of India does not make any distinction between a major and a minor in the matter of fundamental rights. According to him, Article 21 of the Constitution of India is wide enough to include the right of the girl Sasikala to



continue her pregnancy and have a child. In Durga Das Basil's "Shorter Constitution of India", 10th Edition, the following passage is found at page 108:-

"Are there any unenumerated Fundamental Rights under the Constitution of India? A view is recently gaining ground that even though a right is not specifically mentioned in Article 19(1), it may still be regarded as a fundamental right if it can be regarded as 'an integral part' of any of the fundamental rights specifically mentioned in Article 19(1) as distinguished from the ordinary incidents of a named right. Consonant with this view, it has been held that the following unenumerated rights can be enforced under Article 19 even though not mentioned therein:

(a) Right to travel, which is necessary for exercising one's fundamental rights of trade or business under Article 19(1)(g).

(b) Right to privacy, as an integral part of the freedom of movement under Article 19(1)(d).

(c) Right to receive such higher or professional education as is necessary for carrying on a particular trade or profession, under Article 11(1)(g).

(d) Right to human dignity.

(e) Right of an accused to a speedy trial."

Again, at page 157 it is said:

"Right of privacy. 1. In Kharak Singh's case (AIR 1963 S.C. 1295), domiciliary visit by the Police without the authority of a law, was held to be violative of Article 21, assuming that a right or privacy was a fundamental right derived from the freedom of movement guaranteed by Article 19(1)(d), as well as personal liberty guaranteed by Article 21.

2. But such right would not be absolute but must be subject to reasonable restrictions so that a provision for domiciliary visits would not be unreasonable if confined to habitual criminals or persons



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having criminal antecedents. Nor would it be violated by posting Policemen immediately outside the jail.

3. *Similarly, wire-tapping of voluntary conversation, for the purpose of investigation of crime, has been upheld, assuming that privacy of conversation would be derived from personal liberty' under Article 21."*

51. *We are also of the view that the life of the child in the embryo cannot be taken away for the reasons urged by the petitioner.*

52. *Jane E.S. Fortin, Lecturer in Law, King's College, London has in his Article "Legal Protection for the Unborn child" at page 54 in the "The Modern Law Review", January 1988, (Vol.51, No. 1) said thus:-*

"The fact that the unborn child is physically dependent on its mother prior to birth need not lead to the assumption that it has no relevant separate existence nor to the assumption that it has no moral or legal significance."

53. *The Hindu law has always recognised the right of a son en ventre sa mere in the family property. In Mayne's Hindu Law, 12th Edition, page 688 (Para 443) it is said:-*

"A son who was in his mother's womb at the time of partition but was born subsequent to it, is however entitled to reopen the partition and to receive a share equal to that of his brothers. For, a son in the womb is in point of law in existence. If the pregnancy is known at the time, the distribution should be deferred till its result is ascertained, or the distribution may take place, and a share equal to that of a son may be provisionally reserved so as to be allotted to the after-born son, if any. If the pregnancy is not known, and a son is afterwards born, a redistribution must take place of the estate as it then stands. However, if the son in the womb is not born alive he has no rights."

54. *Section 20 of the Hindu Succession Act, 1956, is in the following*



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"A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate."

CONCLUSION

55. Taking the facts and circumstances of the case into account, we hold that the prayer of the petitioner cannot be granted. However, we consider it necessary to issue appropriate directions in the interests of the girl as regards the care and attention to be given to her during her pregnancy and for the post-delivery period. We will pass a separate order containing such directions. Hence, this petition is dismissed.'

(ii) We also noticed the case of ***X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another*** reported in ***(2023) 9 SCC 433*** wherein a three Judge Bench of Hon'ble Supreme Court made it clear that the decisional autonomy of a woman to procreate or not is an integral part of right to privacy and this Judgment was rendered post K.S.Puttaswamy. In this ***X Vs. NCT Delhi***, Hon'ble Supreme Court also made it clear that ultimate decision maker regarding whether to continue with pregnancy or to terminate



unwanted pregnancy is the woman concerned.

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(iii) In *Z Vs. State of Bihar and others* reported in (2018) 11 SCC 572, another three member Hon'ble Bench of Supreme Court echoed the same views albeit earlier to *X Vs. NCT Delhi*.

(iv) In *S.Varadarajan Vs. State of Madras* reported in 1964 SCC OnLine SC 36, a three member Bench of Hon'ble Supreme Court had made an observation regarding a minor aged about 16 to 17 years, who went away on her own volition from the custody of her lawful guardian that 'she was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was good and what was bad for her.' In the case on hand, the minor is aged 17 years (Date of Birth is 17.09.2006). Therefore, the observation made by Hon'ble Supreme Court squarely applies to the case on hand. More so, in the light of Doctors' opinion that her judgmental capability is intact and her cognitive skills are good.



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(v) We also deem it appropriate to usefully refer to a Full Bench Judgment of this Court in ***T.Sivakumar Vs. The Inspector of Police and others*** reported in ***2011 (5) CTC 689***, wherein a Full Bench of this Court under some what similar circumstances made it clear that whether a minor girl has reached the age of discretion is a question of fact which the Court has to decide based on facts and circumstances of each case. In this case, medical report is before us and it says that she is cogent, not diagnosed with any mental illness and her cognitive judgmental capability is intact. In this very ***T.Sivakumar's*** case, Hon'ble Full Bench also made it clear that while a minor girl cannot be allowed to walk away from the legal guardianship of her parents, equally if she expresses her desire to the contrary ie., not to go with parents, the Court cannot compel her to go to the custody of her parents and instead the Court may entrust her custody to a fit person or entity subject to her volition.



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(vi) In this case absentee has been apprised of sixth respondent ie., LTSH and it is her decision stemming from her own volition to continue the pregnancy, deliver and stay there till attaining majority.

(vii) We also deem it appropriate to usefully refer to orders made by another Coordinate Hon'ble Division Bench in *Kajendran's* case [*Kajendran Vs. Superintendent of Police and others* in H.C.P.No.2182 of 2022] (orders dated 07.07.2023 and 14.08.2023) wherein certain directions were given vide POCSO in cases of consensual situations.

10.Considering the legal position, after matching and marrying the obtaining legal position with the factual matrix and giving our anxious consideration to all aspects of the matter, we make the following order:

(i) The absentee shall now be moved from St.Patrick's Isaac Home to sixth respondent i.e., Lifeline Trust Specialised Home, No.52, Rajaganapathy Street, Chinnathiruppathi, Salem-636 008;



(ii) The absentee shall now be housed in LTSH which shall take care of her continuation of pregnancy, give her adequate medical care right up to her delivery, post delivery care and house her till she attains majority i.e., till 17.09.2024;

(iii) Post 17.09.2024, it is for the absentee to make a choice of her own;

(iv) While absentee is housed in LTSH, parents ie., HCP petitioner and his spouse can visit her if absentee agrees to see them. In other words, absentee shall not be compelled to interact with her parents, but if she is willing to see her parents, LTSH shall permit her parents to see her;

(v) Likewise if third respondent and his mother want to visit absentee, they will also be permitted if absentee agrees to see them;

(vi) If the absentee wishes to see or meet anyone else, permission shall be granted after examining the request on a case to case basis and if any clarification is required, this Court can be approached;

(vii) The entire process upto delivery and absentee attaining majority shall be as per Standard Operating Procedures (SOP) put in place by LTSH;

(viii) As regards second respondent, we make it clear that we are not in any manner interceding in investigation but we make it clear that it is open to the second respondent to follow Director General of Police circular, dated



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03.12.2022 bearing reference Rc.No.
009464/Crime-4(3)/2022 and carry the matter to its logical
end;

(ix) The Doctors of Government Rajaji Hospital, who
examined absentee, have opined that antenatal care as per
SOP has to be followed and LTSH shall take care of this
facet of the matter; and

(x) The entire medical records of absentee shall now
be handed over to Ms.Suganya of LTSH for further action.

11.Before we drop the curtains and write the formal conclusion,
we deem it appropriate to place on record our appreciation and gratitude
to all concerned. We place on record our special thanks and appreciation
to:

(i) Amicus Ms.B.Poongkhulali, who has done detailed
homework, prepared a compilation of case laws and
travelled from Chennai multiple times, visited Police
Station, Hospital and interacted with all the stake holders
and for the hearing all pro bono;



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(ii) Ms.Suganya, Project Director, LTSH, Chinnathiruppathi, Salem for having readily accepted the responsibility;

(iii) The District Child Protection Officer for giving adequate support;

(iv) The Doctors in the Government Rajaji Hospital, Madurai for having spent their valuable time both in the Hospital and in the Court by attending the hearings in short notice and enlightening this Bench on the medical aspects of the matter;

(v) Sisters from St.Patricks Isaac Home who have thus far housed the absentee and absentee is transferred and housed in LTSH;

(vi) Ms.Amutharani, Senior Counsellor of One Stop Centre, Madurai, who coordinated this exercise;

(vii) Ms.R.Sangeetha, Inspector of Police, All Women Police Station second respondent and her team who have been very diligent and for being live to the situation; and

(viii) Learned Prosecutor who was very fair in the whole exercise.



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12. With the aforesaid observations and directives, captioned HCP is disposed of. There shall be no order as to costs.

[M.S., J.] & [R.S.V., J.]
28.11.2023

Index : Yes
Neutral Citation : Yes
ps/vvk

Post Script:

- (i) Upload forthwith.
- (ii) Though the captioned matter is disposed of, the matter will be listed under the caption '**FOR REPORT**' on the last Court working day of every calendar month and we requisition a short half a page report from respondents 5 and 6 about the progress.

To

1. The Commissioner of Police,
Madurai,
Madurai District.
2. The Inspector of Police,
S.S.Colony Police Station,
Madurai District.
3. The Dean,
Government Rajaji Hospital,
Madurai.



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4. The District Child Protection Officer,
Child Welfare Committee,
Madurai District.
(Collectorate Campus).

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

ps/vvk

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