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HCP.No.585 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
and
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.585 of 2024

R.Senthilkumar

... Petitioner

Vs.

1.The Commissioner of Police
Commissioner of Police Office
Coimbatore City
Huzur Road, Coimbatore 641018

2.State through Inspector of Police
B10 Selvapuram Police Station
Perur Main Rd, Selvapuram South, Selvapuram
Coimbatore 641026

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling the 1st and 2nd respondent to produce the body and person of the petitioner's daughter named Rashmika (aged 17 years old) D/o.R.Senthil Kumar before this Court and handover to the petitioner forthwith.

For Petitioner : Mr.K.M.Anand



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For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

On 08.07.2024, this Court had passed the following order:

" On 02.07.2024, we had recorded the background of the case as well as the procedure adopted by the Inspector of Police in conducting the investigation. The said order reads as follows :-

" The petitioner/father had given a complaint before the E1, Singanallur Police Station, Coimbatore, which was registered in FIR No.9 of 2024 under the caption "For Girl Missing." Since there was no sufficient progress in tracing the minor girl, the present Habeas Corpus Petition has been filed.

2. Today, when the matter was called, the learned Additional Public Prosecutor through the second respondent/Police, had produced the minor girl before us. When we interacted with her, she expressed that she intended to live with her father and be under his care and protection. In view of the statement made, the petitioner is now at liberty to take the custody of his daughter.

3. At this juncture, it was brought to our notice that the minor girl, after having left the petitioner's house, had gone to the house of one P.Sundar, who was born on 17.05.2006, and had also married the said boy. It is also represented before us that the second respondent herein had thereafter altered the offences in Crime No.9 of 2024 by including the offences under Sections 366, 344 of the IPC, and 5 (I) r/w 6 of the POCSO Act and Section 6 of the Child Marriage Act, and the boy was also remanded to judicial custody.



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4. When we specifically asked the learned Additional Public Prosecutor as to whether a notice under Section 41-A of the Criminal Procedure Code, 1973, was issued in compliance with the Circular of the Director General of Police, the learned Additional Public Prosecutor, on instructions from K.Premdhass S/o.Krishnasamy, the Sub Inspector of Police, D-2, Selvapuram Police Station, CBE City West Zone, stated that no such notice was given. His statement is hereby recorded.

5. In view of the said procedural infirmity in the arrest, the consequential remand would also become illegal. To this aspect, the learned Additional Public Prosecutor shall file his counter on 08.07.2024.

6. Post on 08.07.2024, on which date the concerned Investigation Officer shall also be present in Court along with the CD file. "

2. After the aforesaid order came to be passed, today, the second respondent herein has filed a counter-affidavit, in which, it is not denied that notice under Section 41-A Cr.P.C., was not issued before the offences in the Crime No.9 of 2024 were altered to the offences under Sections 366, 344 of I.P.C, Section 5(l) r/w Section 6 of the POCSO Act and Section 6 of the Child Marriage Act and before the child in conflict with law (CCL) was apprehended and sent to the Government Special Home, Chengalpattu. It is further stated that since the CCL had kidnapped the victim girl for the second time, the Deputy Commissioner of Police had



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sanctioned for his apprehension and for securing him in a children's home.

3. The Hon'ble Supreme Court of India in ***Joginder Kumar Vs. State of Uttar Pradesh [(1994) 4 SCC 260]*** had held, in no uncertain terms, that the power to arrest need to necessarily mean that the same should not be exercised mechanically. It was also observed therein that as a policy, Police can refrain from arresting the accused in such cases and a notice under Section 41-A of Cr.P.C., can be issued in *lieu* of arrest.

4. Pursuant to the directions of the Hon'ble Supreme Court of India, the Hon'ble POCSO Committee of the Madras High Court passed resolutions and forwarded the same to the Director General of Police, Tamil Nadu for implementation of the decision in ***Joginder Kumar's*** case (cited *supra*). Consequently, the Director General of Police, Tamil Nadu had also issued a circular memorandum in Rc.No.009464/Crime-4(3)/2022, dated 03.12.2022, giving instructions as hereunder:-

- " a) not to show haste in effecting arrest of the accused in mutual romantic cases;
- b) instead issue a notice under Section 41-4



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Cr.P.C to the person concerned for enquiry;

c) record in the case diary, the decision for not arresting the accused, along with the reasons therefor; and

d) resort to arrest only with the permission of the Superintendent of Police / Deputy Commissioner of Police, as the case may be."

5. In paragraph No.2 of the circular, all the Commissioners of Police in cities and all the Superintendents of Police in districts were directed to ensure compliance of the circular in its letter and spirit and was also informed that the failure to adhere to the above instructions will be viewed seriously. Apparently, the present action on the part of the Inspector of Police in arresting the CCL, without issuance of a notice under Section 41-A of Cr.P.C., is in deviation of the procedure described in the circular as well as a violation of the decision of the Hon'ble Supreme Court of India in **Joginder Kumar's** case (cited *supra*). Though the circular of the Director General of Police permits for arrest after prior sanction of the Deputy Commissioner of Police, such a procedure is against the dictum in **Joginder Kumar's** case (cited *supra*). As such, the consequential arrest itself would become illegal.

6. In this background, we are of the affirmed view that in exercise



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of the power under Article 226 of the Constitution of India, the action taken by the respondent in seeking for remand of the Juvenile can be declared as illegal. Consequently, the order of the Juvenile Justice Board, Coimbatore, in D.No.205/இந்ரு/2024, dated 07.06.2024 cannot be legally sustained. The Juvenile Justice Board also ought not to have passed the order sending the CCL to a home.

7. Accordingly, the order, dated 07.06.2024, sending the CCL, Sundar, to the safe custody at Government Special Home, Chengalpattu is set aside. Consequently, the CCL, Sundar, shall be released forthwith.

8. Post this matter on 15.07.2024 for recording compliance."

In continuation of our earlier order, the Habeas Corpus Petition is posted today under the caption for recording compliance.

2.Learned Additional Public Prosecutor on his instructions submitted that the CCL has been released from the Government Special Home, Chengalpattu. On 02.07.2024, we had also recorded the



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statement of the petitioner's daughter that she intended to live with her father and accordingly granted liberty to the petitioner to take the custody of his daughter.

3.Now, it is reported that the petitioner's daughter is also residing under the care and protection of the petitioner. As such, the grievance of the petitioner has been redressed. Furthermore, when this Court had frowned upon the action initiated by the 2nd respondent in detaining the child in conflict to law, without any notice under Section 41-A of the Criminal Procedure Code, 1973, it is now reported that the CCL has also been released and as such no further order is required to be passed in this petition.

4.This Habeas Corpus Petition stands closed accordingly.

[M.S.R., J] [S.M., J]
15.07.2024

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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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To.

1.The Commissioner of Police
Commissioner of Police Office
Coimbatore City
Huzur Road, Coimbatore 641018

2.The Inspector of Police
B10 Selvapuram Police Station
Perur Main Rd, Selvapuram South, Selvapuram
Coimbatore 641026

3.The Public Prosecutor
High Court of Madras
Chennai 600 104

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