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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM :

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

H.C.P.No.775 of 2024

V.Kannan ... Petitioner

Vs.

1.The Inspector of Police,
T5 Police Station,
Thiruverkadu,
Chennai – 600 077.

2.M.Guna

3.Sathiya ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the 1st respondent to produce the body of the detenue namely K.Kavya, aged about 19 years, D/o.Kannan, who's whereabouts not known and produce the detenue before this Court and set her at liberty.

For Petitioner : Mr.R.Marudhachalamurthy

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind

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ORDER

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

Complaining that the petitioner's daughter had gone missing from from 01.04.2024 onwards, his complaint made on 02.04.2024 came to be registered by the first respondent Police in FIR No.190 of 2024 under the caption “woman missing”. Since his daughter could not be traced within a reasonable time by the Police, she has chosen to file the present Habeas Corpus Petition.

2. Admittedly, the petitioner's daughter is a major by age. When she had chosen to leave the petitioner's house and live with the second and third respondents herein, such a decision taken by a person who is a major by age cannot be deemed to be an illegal detention.

3. The consequential issue that arises is as to whether Article 226 of the Constitution of India can be invoked for issuance of a Writ in the nature of Habeas Corpus, when the aspect of “illegal detention” is conspicuously absent.

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4. A Writ in the nature of Habeas Corpus is a prerogative Writ by virtue of which the cause and validity of detention of a person are investigated by a summary procedure. There are certain basic principles for assuming jurisdiction while dealing with a Writ of Habeas Corpus.

5. When an authority holding custody of the detenu, fails to satisfy the Court with regard to the deprivation of his personal liberty, then a Writ of Habeas Corpus will be issued to set the alleged detenu at liberty. However, when the authority satisfies the Court that the detention was through established procedure of law and such detention being legal, then in such cases, a Writ of Habeas Corpus will not be issued. These situations usually arise in cases of preventive detention.

6. In cases of illegal detention of someone, at the behest of another person and the detenu is deprived of his/her liberty, a Writ of Habeas Corpus could be issued to set forth the detenu at liberty. In such non-statutory cases, this Court may direct the person who has detained another person, to produce the latter before the Court, so as to enable the Court to know on what ground he/she has been detained. On being satisfied that a

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person, who is a major by age, has been detained against his/her choice or willingness and has been deprived of his/her personal liberty, the Court may then subject him/her at liberty.

7. In the case of ***'Soni Gerry Vs. Gerry Douglas'*** reported in ***'(2018) 2 SCC 197',*** the Hon'ble Supreme Court, while dealing with a case where the daughter of the petitioner therein, who was a major by age, had expressed her desire to reside in Kuwait, where she was pursuing her education, it was observed thus:-

> *"9..... She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.*
>
> ***10.*** *It needs no special emphasis to state that*

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attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

8. In the case of ***'Mohd. Ikram Hussain Vs. State of U.P.'*** reported in ***'AIR 1964 SC 1625',*** it was observed that a Writ of Habeas Corpus is a Writ of right and not a Writ of course and may be granted only on reasonable grounds or probable cause being shown. In ***'Kanu Sanyal Vs. District Magistrate, Darjeeling'*** reported in ***'(1973) 2 SCC 674',*** the Hon'ble Supreme Court held that the object of a Writ of Habeas Corpus is to secure release of a person, who is illegally restrained of his liberty.

9. The exercise of the extraordinary jurisdiction for issuance of a Writ of Habeas Corpus would, therefore, be seen to be dependent on the jurisdictional fact that the applicant establishes a *prima facie* case that the

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detention is unlawful. It is only where the aforementioned jurisdictional fact is established that the applicant becomes entitled to a Writ, as of right, as held in the case of ***'Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu and Others'*** reported in ***'(2022) SCC OnLine SC 885'.*** Thus, the petition seeking for such a relief should *prima facie* disclose that a person is under illegal detention by someone and only on satisfaction of the same, the Court will proceed to issue a Writ for production of the person from such illegal detention.

10. If that be so, we are unable to appreciate the conduct on the part of the petitioner in having invoked Article 226 of the Constitution of India, which Habeas Corpus Petition is apparently not maintainable.

11. The petitioner has abused the due process of law, more particularly, when an alternate remedy under Section 482 of Code of Criminal Procedure is also available to him. Thus, we are of the view that cost could be imposed on the petitioner for having abused the due process of law.

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12. In the result, the Habeas Corpus Petition stands dismissed with a cost of Rs.10,000/-, which amount shall be paid by the petitioner to the Tamil Nadu State Legal Services Authority, Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order.

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

16.04.2024

Index: Yes/No
Internet:Yes/No
Neutral Citation: Yes/No

Sni

To

1.The Inspector of Police,
T5 Police Station,
Thiruverkadu,
Chennai – 600 077.

2.The Public Prosecutor,
High Court, Madras.

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