

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2013

CORAM

THE HONOURABLE MR. JUSTICE K.N.BASHA

AND

THE HONOURABLE MR. JUSTICE P.DEVADASS

HCP.No.1908 of 2011

and M.P.No.1 of 2013

Sushil Mandal

...Petitioner

vs..

- 1.The State  
rep. By the Inspector of Police  
Sipcot Police Station, Hosur  
Krishnagiri District
- 2.Rajkumar
- 3.The Additional Director General of Police  
CBCID, Chennai.

...Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas corpus directing the respondents herein to produce petitioner's son Sandesh, son of Sushil Mandal, aged about 17 years, now under illegal custody of the 2<sup>nd</sup> respondent herein before this Court and set him at liberty.

For petitioner : Dr.V.Suresh  
For respondents : Mr.A.N.Thambidurai, Addl.Public Prosecutor  
for R1 and R3  
Mr.L.Baskaran for Mr.V.R.Shanmuganathan  
for R2

ORDER

[Order of the Court was made by K.N.BASHA, J. & P.DEVADASS, J.]

The petitioner, father of the detenu, has come forward with this petition, seeking for the relief of direction to the respondents herein to produce petitioner's son Sandesh, son of Sushil Mandal, aged about 17 years, now under illegal custody of the 2<sup>nd</sup> respondent herein before this Court and set him at liberty.

Ca 0078174



2. The petitioner has also filed Miscellaneous Petition in M.P.No.1 of 2013 with the prayer to transfer the investigation in Crime No.368 of 2011 on the file of the SIPCOT Police Station, Krishnagiri District to the Central Bureau of Investigation (CBI).

3. Heard Dr.V.Suresh, learned counsel for the petitioner, Mr.A.N.Thambidurai, learned Additional Public Prosecutor, appearing for the first and third respondent and Mr.L.Baskaran, learned counsel for the second respondent.

4. This is a pathetic and unfortunate case, wherein, the petitioner viz., father of the detenu, the missing boy viz., Sandesh has come forward with this petition with a fond hope to that effect that his son is very much alive and he would have been kept in some undisclosed place.

5. After filing of this H.C.P, the petitioner herein, appeared before this Court several times as party-in-person and represented the matter. On the direction of this Court, the local police filed status report, which was extracted in our earlier order dated 11.07.2012 is hereunder:-

" 2. In this matter, this Court has already directed the investigating agency to file the status report. Accordingly, a Status Report is filed today before this Court by the 1<sup>st</sup> respondent herein. It is stated in the said report that originally a case was registered in Cr.No.368/2011 u/s.174 Cr.P.C., by the 1<sup>st</sup> respondent on the basis of the complaint given by the petitioner herein for "Boy Missing". It is now stated in the Status Report that the 1<sup>st</sup> respondent verified the records relating to all cases of suspicious death registered u/s.174 Cr.P.C. and during such perusal of records, it came to light that a case in SIPCOT Police Station, Hosur, a case in Cr.No.374/2011 was registered u/s.174 Cr.P.C., on 24.10.2011 on the basis of the complaint given by the VAO of Mookandapalli, SIPCOT limits, regarding the death of an unidentified dead body aged about 40 years. It is also stated that an Inquest was conducted over the dead body which was found floating in the Arasanatti lake water. Photographs have been taken and postmortem was conducted and at the time of inquest, the opinion of the witnesses was that the dead person was aged about 40 years and the death is due to drowning in the lake. It is further stated in the report that the Distom test with the sternum bone preserved from the dead body was conducted and it was concluded that the body found, could not be that of a body of 40 years old person and steps were taken to

Ca 0078175



identify the body of the deceased with that of the missing boy Sandesh aged about 17 years.

3. it is also stated in paragraph 5 of the Status Report that investigation was also conducted on the line whether due to enmity regarding love affair of the missing boy with one girl by name Monisha, the daughter of the 2<sup>nd</sup> respondent herein, the boy might be assaulted by few persons and would have thrown the said boy into the said lake. The Skull of the body found in the lake was sent for superimposition test with the photo of the missing boy and it is reported from the said test that the skull of the deceased person would very well belong to the individual, viz., the missing boy."

6. On a perusal of the above said status report and considering the submission made by the petitioner as party-in-person stating that the body, which was found by the earlier investigating agency is not the body of his missing son Sandesh and also considering the arguments of the learned Additional Public Prosecutor, we were constrained to change the investigation from local police to the CBCIB and further directed by order dated 11.07.2012, to complete the investigation and to file the final report within a period of three months from the date of receipt of the records from the local police pertaining to Crime Numbers 368/2011 and 374/2011.

7. The matter is posted today for further hearing. Dr.V.Suresh, the learned counsel appearing for the petitioner vehemently contended that there are several inconsistencies and variations found in the documents relied on by the investigating agency.

8. It is pointed out by the learned counsel for the petitioner that the police website initially revealed the details regarding the missing person and it was mentioned that the age of missing body as 40 years and the identification marks mentioned in the Search Keys is that "A Black Mole on the Right Shoulder". But in the very same police website, later, the identification marks regarding the missing person was mentioned in the Search Keys as "Upper teeth slight damage" and there is no explanation for such subsequent change in respect of missing person details in the police website. The learned counsel for the petitioner, by producing the copy of the said website and also other documents contended that there are several suspicious questions to be raised to the effect that the investigation carried on by the earlier agency as well as the present agency cannot be stated to be fair and unbiased.

Ca 0078176



9. It is further pointed out that in the same website, details regarding unidentified bodies were exhibited on 12.10.2012. It is also pointed out that in respect of unidentified dead body regarding the same Crime No.0374/2011, Sipcot Police Station, Krishnagiri dated 24.10.2011, it was mentioned that the dress was "Green color Fullhand shirt, thick blue color pant, sleeveless banian, thick blue jutti" and it is contended that according to the petitioner, the said dress was not worn by the missing boy when he left the house. It is also pointed out that in the very same website, the body was mentioned as fat, stout and strong, but, according to the petitioner, his son is not like that.

10. The learned counsel for the petitioner also contended that in the post-mortem certificate, it was mentioned that the body of the male aged 40 years, whereas, the petitioner's son was only 17 years at the time of missing. The final opinion given in the said post-mortem certificate is to the effect that "No definite opinion could be given. However, death due to compression of the neck cannot be ruled out."

11. The learned counsel for the petitioner further pointed out that the status report now filed by the present investigating agency dated 23.01.2013 discloses that the present investigating agency simply followed the earlier findings of the investigation carried out by the local police and there is no further improvement to find out whether the body, said to have been found and alleged to have been identified is really the body of the missing boy or not. The present investigating agency has come forward with the present version that there was relationship between another classmate (name omitted) of the missing boy, with a girl, viz., the daughter of the second respondent, with whom, the missing boy was alleged to have friendship and it is the version as per the status report that the said classmate has murdered the missing boy by pushing him into the lake and that the body found is of the missing boy. It is further contended by the learned counsel for the petitioner that the status report placed reliance on the DNA test, which cannot be said to be conclusive proof. Therefore, it is contended that the petitioner is not having confidence in the present investigating agency viz., CBCID and that the petitioner apprehends that he may not get fair and unbiased investigation in their hands.

12. Per contra, Mr.Thambidurai, the learned Additional Public Prosecutor would contend that the investigation was conducted in a proper manner and in accordance with law by the CBCID police. It is further contended that the CBCID police took up the investigation and received the documents from the earlier local police including the post-mortem certificate and other documents. It is further submitted that after the commencement of the investigation by the CBCID, they received superimposition test report and they have sent skull bone for bone case report. It is pointed out that the CBCID police also

Ca 0078177



taken the blood samples from the parents of the missing boy and sent for DNA Test and the test proved positive. It is contended that as per the bone case report, the age of the deceased was fixed as above 17 years and below 22 years. The learned Additional Public Prosecutor would submit that the investigation was almost over and it is in the final stage.

13. Mr.L.Baskaran, learned counsel appearing for the second respondent would contend that the second respondent has been unnecessarily involved in this matter and as the result, the entire family is put into great hardship. It is further contended that in view of this news published in newspapers, the daughter of the second respondent is finding difficult to attend the college and her status is also affected. It is further submitted that the second respondent denied the allegations levelled against him in the affidavit filed by the petitioner.

14. We have given our careful and anxious consideration to the rival contentions put forward by either side and perused the materials available on record and also perused the latest status report filed by the CBCID dated 23.01.2013 and the affidavit filed by the petitioner and the counter affidavit filed by the second respondent.

15. At the outset, it is to be stated that the petitioner, being the affectionate father of the missing boy has repeatedly come forward with the fond hope to the effect that his son is very much alive and he could have been kidnaped and kept in some undisclosed place. Though it is alleged by the petitioner that he is having a suspicion against the second respondent, we are of the considered view that we cannot express any opinion on that aspect and it is for the investigating agency to find out the truth. It is the consistent version of the petitioner that the body said to have been found by the investigating agency is not the body of his son. In order to substantiate the said version of the petitioner, Dr.V.Suresh, the learned counsel for the petitioner took enormous pain and took us through the meticulous documents filed by the petitioner including the documents downloaded from the police website in respect of the unidentified dead body regarding the missing person.

16. It is pointed out by the learned counsel for the petitioner that there are variations in respect of the said police website regarding the missing person details since in one website, it is mentioned in the column - search keys as "A black hole on the right shoulder" found on the missing boy. But, in the same website, it is subsequently reflected under column 'search keys' as "upper teeth slight damage". It is further mentioned that in respect of age found on the unidentified dead body claimed to be that of the missing boy,



as a person aged 40 years and in the column "dress", it is mentioned as "green color fullhand shirt, thick blue color pant, sleeveless banian, thick blue jatti", but, according to the petitioner, such dress was not worn by the petitioner's son, when he lastly left the house.

17. Added to these variations and inconsistencies, it is pointed out by the learned counsel for the petitioner that it is pertinent to note that in the post-mortem certificate, the age of the dead body was mentioned as 40 years and the final opinion of the doctor is stated as hereunder:-

"No definite opinion could be given. However, death due to compression of the neck cannot be ruled out."

18. It is the grievance of the petitioner that till date, the present investigating agency CBCID has not taken any serious steps to find out whether the body, said to have been found and alleged to have been identified is really the body of the missing boy or not.

19. A perusal of the status report dated 23.01.2013 reveals that the present investigating agency viz., CBCID has taken further steps on receipt of documents from the local police viz., post-mortem certificate etc., The present CBCID police received the superimposition report and thereafter, collected the blood samples from the parents of the missing boy and sent for DNA test and it is stated that the said test proved positive. It is also stated in the status report regarding the skull test conducted after the investigation commenced by the CBCID as hereunder:-

"16. I most respectfully submit further that after a due examination of the skull with mandible DNA was extracted from the skull and compared. The experts are of the opinion that the skull with mandible belongs to a human male individual (i.e) the child to whom the skull with mandible belongs was the biological son of Mr.SushilMandal and Mrs.Prema Mandel. Therefore, the investigation so far done disclosed that the missing boy Sandesh was done to death by another boy (name mentioned in the report has been deleted), due to rivalry in love affair with a girl. Also investigation disclosed that the unknown male dead body concern in Sipcot PS. Cr.No.374/2011 u/s.174 Cr.P.C. @ 302 IPC, is that of the missing boy Sandesh."

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20. In the same report, in paragraph 24, the expert opinion as per the superimposition report, is stated as hereunder:-

" It is submitted that during the course of investigation, the photograph of the missing boy Sandesh and the skull concerned in Cr.No.374/2012 of Sipcot police station was subjected for superimposition test. The expert has opined "that the skull could very well have belonged to the male individual seen in the photograph" (2) To ascertain the age of the skull, the same skull was sent to Forensic department, Government Mohan Kumaramangalam Medical College Hospital, Salem, for dental examination. After a due examination, the Forensic Experts have issued a report that the age of the skull is above 17 years and below 22 years. (3) Further, to ascertain the identity of the missing person and skull said supra, the skull was sent to Tamil Nadu Forensic Science Department, Chennai for extracting DNA profile and to compare the same with the DNA profiles of the petitioner and his wife. In this regard, report was received from Tamil Nadu Forensic Science Department, Chennai, which shows that "the skull with Mandible belongs to a human individual (i.e.) the child to whom the skull with mandible belongs was the biological son of Mr.Sushil Mandal and Mr.Prema Mandal", Vide DNA 175/2012 of TNFSL, Chennai, dated 27.11.2012."

21. A perusal of the above said statement made in the status report filed by the CBCID discloses that the CBCID has taken further steps by way of taking blood samples from the parents of the missing boy and sent the skull bone to ascertain the age viz., bone case test and they have also fixed one of the Classmates of the missing boy, who is alleged to have relationship with the daughter of the second respondent as an accused.

22. However, the petitioner is still not satisfied and expressed apprehension that he may not get fair and unbiased investigation at the hands of the present investigating agency viz., CBCID. The reason for such apprehension as pointed out by the learned counsel for the petitioner is to the effect that there are lot of inconsistent statements made in the police website to the effect that the particulars mentioned regarding the age of the body, which was found and subjected to post mortem as 40 years, whereas, the missing boy is about 17 years. It is also highlighted by way of tabular column in the affidavit filed in support of the petition in M.P.No.1 of 2013 to substantiate the version that he is confident that the body now found and claimed to be that of the missing son is not that of his son as hereunder:-

Ca 0078180



S.No.	Description of the unidentified body	Description of my son
1	The body is that of a middle aged man, aged about 40 years, who was described as strong and stout.	Aged about 17 years old, normal, build, more on the lean side.
2	Clothes found on the UID-Green color full hand shirt, thick blue color jeans pant, sleeveless banian, thick blue jatti	Clothes worn by my son at the time he went missing- blue and green striped shirt, grey and black colour pant, white banian, white jatti
3	Upper teeth missing / broken. The picture of the skull shown that a lot of the upper teeth were missing. As per Modi in 'Medical Jurisprudence and Toxicology' - "Teeth are more resistant to destructive agents than any other structures and are well protected".	No injury to teeth and completely intact. No teeth missing or broken. Note. The police deliberately without notice to us changed the description in the police website in the column "search keys" - upper teeth slightly damaged. This fabrication was one to support their false claim that the UID was that of my son.
4	As per the post mortem report the deceased died 5 - 7 days prior to autopsy. Post mortem was done on 24 <sup>th</sup> October, 2011. Thus time of death was fixed between 18 <sup>th</sup> and 19 <sup>th</sup> October.	My son went missing on 15 <sup>th</sup> October. As per the alleged confession of the alleged minor (name omitted), he pushed my son into the lake on the 15 <sup>th</sup> of October. Hence dates do not match.
5	As per the post mortem report neck specimen shows underlying contusion. The cause of death though not definite it is stated that death due to compression of neck cannot be ruled out.	As per the alleged confession of the alleged minor (name omitted) he pushed my son into the lake on the 15 <sup>th</sup> of October, 2011, and saw my son drown in the lake. There is no mention of any assault on the neck.

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S.No.	Description of the unidentified body	Description of my son
6	Body was found upstream of Arasanneti lake.	The alleged pushing of my son into the lake was downstream.
7	The black and white photo copy of the photograph of the body produced in court has no face. It is just a mess of flesh. The post mortem report states that the eye balls were protruding, moving maggots seen in mouth and nose. Thus there is a doubt whether the photocopy produced in court is genuine.	
8	No diatom was present in the sternum sample analysed.	As per the alleged confession of minor (name omitted), he pushed my son into the lake and waited and saw my son drown in the water.
9	As per the post mortem report the stomach was empty.	My son left the house on 15.10.2011 after having dinner which a proper meal.

23. By placing reliance on such tabular column, the learned counsel for the petitioner contended that there is absolutely no improvement and the present investigating agency just followed the investigation carried on by the local police.

24. Considering the above said factors raised by the learned counsel for the petitioner, we are of the view that the petitioner is very much confident that the body now found and subjected to all test cannot be of his son and he has raised the apprehension to the effect that he cannot get fair and unbiased investigation at the hands of the present investigating agency viz., CBCID.

25. At this juncture, it is relevant to refer the decision of the Honourable Apex Court in the case of R.S.Sodhi Vs. State of U.P., reported in AIR 1994 SC 38, wherein, the Apex Court has held as hereunder:-

"2. ....However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind we have thought it both advisable and desirable as well as in the interest of justice entrust the



investigation to the Central Bureau of Investigation forthwith and we so hope that it would complete the investigation at an early date so that those involved in the occurrence one way or the other may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice."

26. In the case of *State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others* reported in (2010) 3 SCC 571, wherein, the Apex Court has held as hereunder:-

"The words 'life' and 'personal liberty' are used in Article 21 as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right to the continuance of a person's animal existence. All those aspects of life, which make a person live with human dignity are included within the meaning of the word 'life'. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. Article 21 in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. In certain situations even a witness to the crime may seek for and shall be granted protection by the State. The right to life and personal liberty is paramount. Likewise, if Articles 14 and 19 are put out of operation, Article 32 will be drained of its life blood.

..... Being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part II in general and under Article 21 of the Constitution in particular, zealously and vigilantly. Therefore, a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in



law.

..... However, despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very planitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where such an order may be necessary for doing complete justice and enforcing the fundamental rights ..... An order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose prima facie case calling for an investigation by CBI or any other similar agency."

27. In yet another decision in *Rubabbuddin Sheikh Vs. State of Gujarat and Others* reported in (2010) 2 SCC (Cri) 1006, the Hon'ble Apex Court has held that,

" It was necessary to ensure that investigation should not only be fair but should also seem to be fair, in order to instill confidence in the mind of victims' relatives and general public."

28. Let us now consider the above said factors pointed out by both sides with the touch-stone of the principles laid down by the Hon'ble Apex Court in the decisions cited supra.

29. If we consider the inconsistencies and variations pointed out by the learned counsel for the petitioner on the basis of the tabular column as incorporated earlier in our order, as stated in the affidavit of the petitioner as well as on the basis of the perusal of the post-mortem certificate and the materials downloaded from the website, we are of the view that the investigating agency, till date has not prima facie established that the body said to have been found and identified is that of the body of the missing person.

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30. We cannot ignore and brush aside the version of the petitioner that they have not identified the body said to have been found by the investigating agency as that of the missing boy. It is the definite stand of the petitioner as stated in the affidavit that neither himself nor his wife has identified the body said to have been identified by the investigating agency as their missing son. The definite stand of the petitioner in his affidavit, filed in support of the petition is as hereunder:-

"There are many injuries on the body. The body was clearly not that of my son. I informed the police as well. If it was that of my son we would have definitely claimed it and not abandoned it. Even in the police website where the photos and details of all unidentified bodies are given, the description given was that it was the body of a 40 year old man. Identity was given as one broken tooth. The photograph in the police website clearly showed the face."

31. In view of the specific and definite stand taken by the petitioner, it is crystal clear that the petitioner is not reposing confidence in the investigation carried on by the present investigating agency CBCID.

32. Lastly, at the risk of repetition, it is to be reiterated that the Hon'ble Apex Court in the decisions cited supra has held that it is necessary to ensure that investigation should not only be fair but also seen to be fair, in order to instil confidence in the mind of victims' relatives and general public.

33. For the foregoing reasons, we have come to the irresistible conclusion that in the interests of justice and in order to instil confidence in the minds of victim and to ensure effective, fair and unbiased investigation, it is necessary to entrust the investigation to an independent agency viz., Central Bureau of Investigation. The CBCID police viz., the present investigating officer nominated by the third respondent herein shall hand-over the entire records connected with this case to the Joint Director, Central Bureau of Investigation, Rajaji Bhavan, Besant Nagar, Chennai within 15 days from the date of receipt of a copy of this order. It is made clear that the Joint Director, CBI, in turn shall nominate a competent police official of CBI, not below the rank of Deputy Superintendent of Police with sufficient team of officials to assist him and to investigate into this matter. It is further made clear that the State police shall give all co-operation and co-ordination to the CBI police in respect of the investigation to be carried out by the CBI in this matter.

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34. Accordingly, the Habeas Corpus Petition is disposed of with liberty to the petitioner to approach this Court on the basis of outcome of the investigation done by the CBI, if he is having any grievance. In view of the above order, the Miscellaneous Petition is closed.

SD/  
Asst. Registrar

/True Copy/

P. Balu  
Sub Asst. Registrar

nvsri

To

1. The Inspector of Police,  
Sipcot Police Station,  
Hosur, Krishnagiri.
2. The Additional Director General of Police,  
CBCID, Chennai.
3. The Public Prosecutor,  
High Court, Madras.
4. The Joint Director,  
Central Bureau of Investigation,  
Rajaji, Bhawan, Besant Nagar,  
Chennai-90.

+ 1 C.C. to MR.N.Nagasaila, Advocate Sr.18630

+ 1 C.C. to MR.V.r.Shanmuganathan, Advocate sr.18828

HCP.No.1908 of 2011  
& M.P.No.1 of 2013

TRM[CO]  
RR 13/04/2013

Ca 0078186



MP 1/13/11  
Hus 1908/11

HIGH COURT OF JUDICATURE	
MADRAS.	
C.R. No.	18630
Carbon Copy application	
made	1/4/2008
Application Returned	2008
Application Represented	2008
Copy made ready	17/4/2008
Copy Delivered	18/4/2008
U. S. K. I. A. L.	
Section Officer	
Court of Sessions	