



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.01.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA

and

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI

Habeas Corpus Petition No.83 of 2018

K.Shanmugapriya

... Petitioner

-vs-

1.The Superintendent of Police,
Theni District,
Theni.

2.The Inspector of Police,
Kandamanur Police Station,
Theni.

3.Chinnamuthu @ Muthusamy
4.Subbuthayi

... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of Constitution of India, seeking a direction to the 1st and 2nd respondents to produce the person and body of the detenu, namely, Minor Sarathi Saravana aged about 9 years, S/o.Late.Saravanan and produce him before this Honourable Court and hand over his custody to the petitioner herein.

For Petitioner	: Mr.P.Kottaichamy
For R1 & R2	: Mr.C.Ramesh
	Addl. Public Prosecutor
For Detenu	: Mr.M.Paun Raj

O R D E R

(Order of the Court was made by
S.Vimala,J.,)

The petitioner, who is the mother of the detenu, has filed this petition, seeking direction to the Respondent Nos.1 and 2 to produce her son, namely, Minor Sarathi Saravana, S/o.Late Saravanan, aged about 9 years before this Court and hand over his custody to the petitioner.



2. According to the petitioner, she married one Saravanan and out of the wedlock, two male children were born; on 23.07.2011, her husband died intestate on account of an electrical accident in the company, the elder son was in her custody and her younger son by name Sarathi Saravana was allowed to grow with his grandparents (parents of her husband) pursuant to the fondness shown by them; after the death of the husband of the petitioner and after her re-marriage, she was not allowed to see her son and therefore, she preferred a complaint with the respondents 1 and 2 for entrusting the custody of the son with her. Since no effective steps were taken by the Police, she is before this Court, seeking for the above direction.

3. The learned Additional Public Prosecutor has produced the detenu, namely, Minor Sarathi Saravana, accompanied by his grandfather before this Court with the help of Police.

4. According to the petitioner, the guardianship of the child was given to her in-laws' custody for sometime, when the child was four months old and she is now restrained from seeing her son.

5. In the presence of the petitioner and the grandfather of the child, the detenu Minor Sarathi Saravana was enquired, who has stated that he likes his mother and brother very much, but, however, he wants to be with his grandparents. The inclination / willingness expressed by the child appears to be very fair, frank and without coercion and therefore, it is not a case of forcible abduction and the custody with the grandparents cannot be termed as illegal custody

6. The grandfather, who is present before this Court has submitted that neither he nor his wife ever prevented the child from seeing his mother and brother and though they are not inclined to visit the house of the petitioner, they are inclined to send the child to meet his mother / petitioner herein.

7. Construing the case in legal parlance, this writ petition is not maintainable in the light of the facts alleged. However, paramount consideration is the welfare of the child. More than the rights of the parties, the interest of the minor would outweigh the decision.

8. Considering the fact that the detenu, though very fond of his mother and brother, has expressed his wish to be with his grandparents and forcible separation of the child from his grandparents may create fear in the mind of the child and affect his studies at this stage, we permit the continuation of the custody of the child with the grandparents, unless there is a specific order with regard to permanent guardianship of the child obtained from the competent Court of law by the petitioner. The petitioner is permitted to visit her son / detenu, namely, Minor Sarathi Saravana on every Saturday and Sunday.



9. The Habeas Corpus Petition stands closed accordingly.

Sd/-
Assistant Registrar (CO)

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/True Copy/

Sub Assistant Registrar

To

- 1.The Superintendent of Police,
Theni District,
Theni.
- 2.The Inspector of Police,
Kandamanur Police Station,
Theni.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.M.POUN RAJ, Advocate SR.No.43381.
+1cc to M/S.P.KOTTAICHAMY, Advocate SR.No.43856.

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23.01.2018

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