



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

and

THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD)No.458 of 2018

S.Saravana Ganesh

... Petitioner

Vs.

- 1.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 2.The Deputy Superintendent of Police,
Sivakasi,
Virudhunagar District.
- 3.The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
- 4.A.Karthikeyan

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the Respondents 1 to 3 to produce the body or person of detainees namely Minor S.Monish, son of S.Saravana Ganesh, aged about 9 years and Minor S.Didya, daughter of S.Saravana Ganesh, aged about 1 3/4 years before this Hon'ble Court and hand over them into the custody of petitioner.

For Petitioner : Mr.A.Chandrakumar

For Respondents : Mr.K.Dinesh Babu
1 to 3 Additional Public Prosecutor

For 4th Respondent : Mrs.D.Farjana Ghoushia
for Mr.G.Mariappan

ORDER

(Order of the Court was made by C.T. SELVAM,J.)

The petitioner has sought production of his minor children viz., S.Monish, aged about 9 years and S.Didya, aged about 1 3/4 years and handing over of their custody to his care.

2.When the matter was listed on 24.04.2018, the petitioner as also his father-in-law/4th respondent and his wife along with minor children were present. The matter was adjourned to 25.04.2018 and further posted to today (26.04.2018).



3. We have heard learned counsel for the petitioner, learned Additional Public Prosecutor for the respondents 1 to 3 and learned counsel for the fourth respondent.

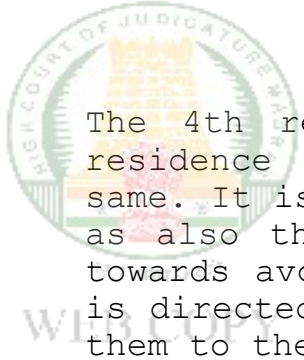
4. Learned counsel for the petitioner submits that petitioner's wife committed suicide by hanging on 26.01.2018 and a case has been registered in Crime No.79 of 2018 on the file of the 3rd respondent under Section 174 Cr.P.C. The petitioner's wife had attempted suicide on several earlier occasions and the occurrence had taken place when the petitioner had taken the younger child viz., S.Didya along with him and had gone outside and the elder child Monish was at school, he is having left there. The elder child had been earlier dropped at school by the petitioner's wife. Excepting for the earlier attempts of suicide by the wife, the rest is found informed even in the F.I.R. However, the case subsequently has been altered to one under Section 306 I.P.C. and the petitioner has been taken into custody and on his release on bail the petitioner approached the fourth respondent seeking custody of the children and on the same being refused, the petitioner moved this Court with the present petition.

5. Learned counsel added that the petitioner had suffered much at the hands of the deceased wife. She had been given to violence, had beat him on several occasions and had assaulted also the children. He contended that the petitioner had been put to mental agony by the father-in-law/4th respondent. He has sworn to an affidavit dated 24.04.2018 averring the aforesaid facts.

6. Learned counsel for the fourth respondent submits that right since the death of the mother/wife of the petitioner, the children had been in the custody of maternal grand-parents/4th respondent and his wife. Learned counsel further submitted that the petitioner is now accused of offence under Section 306 I.P.C. and his holding custody of the children might result in tampering with the evidence against him.

7. We have considered the rival submissions and also raised query on to how the petitioner would be able to take care of the two minor children. Petitioner has informed that his is a joint family comprising his father, a widowed sister aged 47 years, brother, sister-in-law and their children. He has also informed that his widowed sister, having no issues, is most affectionate and caring towards the children.

8. In the facts and circumstances of the case and the position that admittedly the death of the petitioner's wife was due to suicide and none of the children had witnessed the same, it would be appropriate to place the children in the custody of their natural guardian and father, the petitioner. We understand that the 4th respondent and his wife, having lost their daughter, have love and affection towards their grand-children and care for their welfare.



The 4th respondent and his wife may visit the children at the residence of the petitioner. The petitioner shall not impede the same. It is expected that both the petitioner and his family members as also the 4th respondent and his wife would conduct themselves towards avoiding any untoward incident. The third respondent police is directed to take the custody of the minor children and hand over them to the petitioner.

9.This Habeas Corpus Petition stands ordered accordingly.

Sd/

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

- 1.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 2.The Deputy Superintendent of Police,
Sivakasi,
Virudhunagar District.
- 3.The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.A.Chandrakumar, Advocate, SR.No.63715

+1cc to Mr.G.Mariappan, Advocate, SR.No. 63905

H.C.P. (MD) No.458 of 2018
26.04.2018

SJ

KK/SV MMS/27.04.2018/SAR-1/3P-8C