

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.630 of 2019

S.Sujendhar ... Petitioner/Petitioner of the detenu

Versus

1.The Inspector of Police,
W-32, All Women Police Station,
Madipakkam, Chennai.

2.Thaiyalnayaki

3.Sumathi Palani

4.Jayakumar

5.Kannan ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the 1st respondent to secure the detenu S.Sithar, aged about 10 years, the son of the petitioner herein, who is illegally detained by respondents 2 to 5 and to produce him before this Court.

For Petitioner : Mr.U.Gokulakrishnan

For Respondent : Mr.C.Iyyappa Raj
No.I Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the father of the minor detenu, namely Sithar, aged about 10 years (D.O.B.11.08.2008). According to

him, he married the second respondent on 11.11.2007 and out of wedlock, they have begotten minor detenu and daughter namely Mona Sree, aged about 1 ½ years. It is further stated by the petitioner that some time after the marriage, difference of opinion arose between him and the second respondent and despite mediator efforts done by the elders of the family members on either side, it fails. The minor detenu was admitted in New Prince Matriculation School, Chennai and undergoing studies in the 5th standard and the second respondent under the pretext of visiting the matrimonial home, during November 2018, along with the new born baby namely, Mona Sree suddenly vanished on 05.01.2019 along with the minor detenu. The petitioner, in this regard, has also lodged a complaint dated 13.02.2019 on the file of the 1st respondent, based on which, CSR number was assigned. The petitioner apprehending safety and well being of the minor detenu at the hands of the 2nd respondent, came forward to file this Habeas Corpus Petition.

2. The Habeas Corpus Petition was entertained on 25.03.2019 and called today. The second respondent was produced by the 1st respondent along with the minor detenu and she would state that the marriage between her and the petitioner was a love marriage and after the birth of two children, difference arose and the petitioner started harassing her on the pretext of dowry and unable to bear with the torture, she left the matrimonial home along with the minor detenu. The second respondent would further add that for want of Transfer Certificate, she is not in a position to admit the minor detenu and taking efforts to admit him in Nalantha School, Ariyalur and the education career of the minor detenu would be taken care of.

3. The petitioner is also present before this Court and he narrated an entirely different story and however, this Court is not inclined to go into the truth or otherwise of the allegations and counter allegation levelled by the petitioner and the wife / 2nd respondent and vice versa. The matter was passed over and the petitioner, 2nd respondent and the detenu met in the chambers of the Public Prosecutor and now they came out with a proposal. As regards visitation rights of the petitioner in respect of the minor detenu, the 2nd respondent would also state that she has no objection for the petitioner to visit and see the minor detenu as well as the minor daughter in her home at Ariyalur and she would further add that advance intimation may be given as to the proposal of the petitioner to have visitation right of the two children.

4. Mr.C.Iyyapparaj, the learned Additional Public Prosecutor appearing for the 1st respondent would submit that for such visit, prior intimation may also be given to the 1st respondent so as to avoid any untoward events / happenings.

5. The 2nd respondent is the biological mother of the two minor children and insofar as the plea of custody is concerned, the parties are at liberty to invoke the competent forum with regard to the custody of the children. As regard visitation rights, the petitioner shall give advance intimation to the 2nd respondent by way of call through mobile phone of the 2nd respondent as well as by message, intimating the date of such visitation and the petitioner, being the biological father, is entitled to have such a visitation right to see his children. A probable time of visitation shall be weekend of Saturdays and Sundays and time is fixed between 11.00 A.M and 04.00 P.M. The petitioner as well as the 2nd respondent, being the parents of the minor detenu and minor daughter shall make every endeavor to create a congenial atmosphere and shall not create any psychological scare on the interest and welfare of the detenu and both of them shall extend their maximum cooperation not only to each other but also to the 1st respondent in that regard. The petitioner is also at liberty to meet out the educational and maintenance expenses of both the children and shall cooperate with the 2nd respondent to get the testimonials/certificates of the minor detenu from New Prince Matriculation School, Chennai, at an early date.

6. The Habeas Corpus petition is disposed of accordingly.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
W-32, All Women Police Station,
Madipakkam, Chennai.

2.The Public Prosecutor
High Court, Madras.

+1 cc to M/s.T.Gowthaman, Advocate, Sr.No. 38696

HCP.No.630 of 2019

SSV(CO)
CSL/06.06.2019