

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No.858 of 2019

Husna Khatun Shaikh Petitioner/Mother of Detenue

-vs-

1.The Superintendent of Police,
Vellore District - 632 009.

2.The Inspector of Police,
All Women Police Station,
Gudiyatham,
Vellore District - 632 602.

3.Alimabee Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to direct the second respondent to secure the petitioner's minor child Izna Ansari who is only 4 years 11 months old, who is in illegal detention by respondent No.3 since 16.10.2018 and produce her before this Court and hand over child to her mother (petitioner).

For Petitioner : Mr.J.Prakasam

For Respondents : Mr.R.Prathap Kumar
Addl. Public Prosecutor for
: R1 & R2
Ms.N.S.Baig
for Mr.N.Sanjeev Kumar for R3

ORDER

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

Seeking a direction to the second respondent to secure the petitioner's minor child Izna Ansari, aged about 4 years 11 months, who is in illegal detention of the third respondent and produce her before this Court and hand over the child to the

petitioner, the present habeas corpus petition has been filed.

2.The petitioner is the mother of the detenue being a minor child born out of the wedlock between the petitioner and the son of the third respondent. Thus, the third respondent is the grandmother of the detenue and incidentally the ex-mother-in-law of the petitioner. The petitioner appears to have met the son of the third respondent on a visit to Dubai. He was a married man at the relevant point of time. Thereafter, both the petitioner and the son of the third respondent got married.

3.It is the case of the third respondent that the petitioner's mother and the petitioner are illegal immigrants from Bangladesh. Cases have been registered in Cr.Nos.59 of 2016 and 38 of 2015 for the offence committed under the Immoral Traffic (Prevention) Act, 1956. The case against the mother of the petitioner is that she brought three minor girls from Bangladesh and involved them in illegal trafficking. The petitioner herself was a bar girl. She met the son of the third respondent during her performance at Dubai.

4.It is the further case of the third respondent that huge sums of money were transferred from the account of the first husband, namely, the son of the third respondent to that of the petitioner as could be seen from the records produced. The petitioner does not have a permanent address and the address given even before this Court was the one in which she was living with the first husband namely, the son of the third respondent at the relevant point of time. The notice sent to the petitioner to the present address got returned with the endorsement that she is not living in the said place. The petitioner gave a complaint against the mother-in-law, inter alia, alleging that she administered phenyl on 29.07.2018. Strangely, this complaint was withdrawn on 14.10.2018 pursuant to the deed of divorce duly signed by her on 01.10.2018. She has also agreed to have the custody of the child with her husband and therefore there could not be any objection for continuing the custody with the third respondent. The minor child is with the third respondent from 15.10.2018 onwards. When the child became sick, she was treated by the third respondent. The air tickets of the third respondent and the minor child would show that the child was taken to the State of Tamil Nadu on 15.10.2018. Now, the minor child is residing with the third respondent at Gudiyatham. It is to be noted that after all these proceedings, the petitioner married for the second time. At that point of time, she did not make any issue. Now, the petitioner was having an affair with the brother-in-law of the son of the third respondent as could be seen from the photographs produced. She is not even living with the second husband now. Thereafter, a police complaint has been given before the Gudiyatham Police Station. Thus, considering the above, the petition will have to be dismissed especially

when the inquiry is pending on her very entry to India. The interest of the child cannot be taken care of by the petitioner in the light of the above said facts. To buttress her submission, the learned counsel has made reliance upon the following decisions:-

- (i) Akanksha Budhiraja Vs. State of Uttarkhand and Others (H.C.P.No.23 of 2018)
- (ii) Dr.(Mrs.) Veena Kapoor Vs. Shri. Varinder Kumar Kapoor (AIR 1982 SC 792)
- (iii) E.Kamala Vs. Bamini, The Inspector of Police and Other (AIR 2005 Mad 101)

5. The learned counsel appearing for the petitioner submitted that this Court will have to see the paramount interest of the child. The allegations made are not true and therefore, cannot be gone into by this Court without due inquiry. The fact that the petitioner is the mother of the detenu is not in dispute. This Court, can consider the paramount interest of the child along with the status of the petitioner being the mother. To support his contention, the learned counsel made reliance on the recent pronouncement of the Supreme Court in Tejaswini Gaud and Others Vs. Shekhar Jagdish Prasad Tewari and Others (S.L.P. (Crl.) No.1675 of 2019 dated 06.05.2019).

6. Numerous documents have been filed by the learned counsel appearing for the third respondent, who is incidentally the first wife of the second husband of the petitioner whose marriage certificate has been filed at Page No.60 of the typed set of papers filed on behalf of the third respondent. Admittedly, there was a case registered against the petitioner's mother though we are not inclined to go into the character as such.

7. Similarly, we are not inclined to go into the other allegations supported by photographs on the alleged relationship of the petitioner with the brother-in-law of the first husband. What is important to be noted is that the petitioner and her mother came from Bangladesh. Prima facie, it appears they do not have a permanent address. The petitioner did sign the deed of divorce. However, it is her case that it was obtained by force by playing fraud. The document also clearly shows that the petitioner agreed to part with the minor child. She did withdraw the complaint by an application dated 14.10.2018. Thereafter, the third respondent has left Mumbai and came back to Gudiyatham. It is only after these occurrences, the petitioner married for the second time. Now, the present complaint has been given before the Gudiyatham Police Station on 15.04.2019 in C.S.R. No. 126 of 2019. We also note that the petitioner did not raise any objection with the deed of divorce signed by her which

can be seen from the fact that she married for the second time as could be seen from the marriage certificate.

8.From the aforesaid facts and narration, we are of the view that the relief sought for by the petitioner cannot be granted. There is no quarrel over the position of law that in a habeas corpus petition, this Court can decide the custody of the minor child on the principle of parens patriae. However, we are not inclined to exercise the said jurisdiction in favour of the petitioner in this case. There are so many materials available which cannot be gone into by us in this proceedings. Prima facie, it appears that the petitioner and her mother hail from Bangladesh and do not have a permanent address. There appears to be an inquiry with their continuance in this country. The child has settled down with the third respondent by this length of time. Thus, we are of the view that the relief sought for by the petitioner cannot be granted in this proceedings.

9.However, by taking into consideration the fact that the petitioner is the mother of the detenu and the learned counsel for the third respondent herself has stated that there is no objection for the visit of the petitioner in the residence of the third respondent, we make it clear that the petitioner is at liberty to visit the detenu. We permit her to have a visit of the detenu, namely, the minor child once in a month during Sunday from 10.00 a.m. to 4.00 p.m., after due notice to the third respondent. Liberty is also given to her to file an appropriate application before the appropriate Court, seeking custody, if so advised.

10.We make it clear that the visitation will be in the residence of the third respondent. We further make it clear that the petitioner is at liberty to have telephonic conversation with the detenu during week ends as otherwise the education of the child would be affected apart from her mental state.

11.With the aforesaid observation and direction, the habeas corpus petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1.The Superintendent of Police,
Vellore District - 632 009.

2.The Inspector of Police,
All Women Police Station,
Gudiyatham,
Vellore District - 632 602.

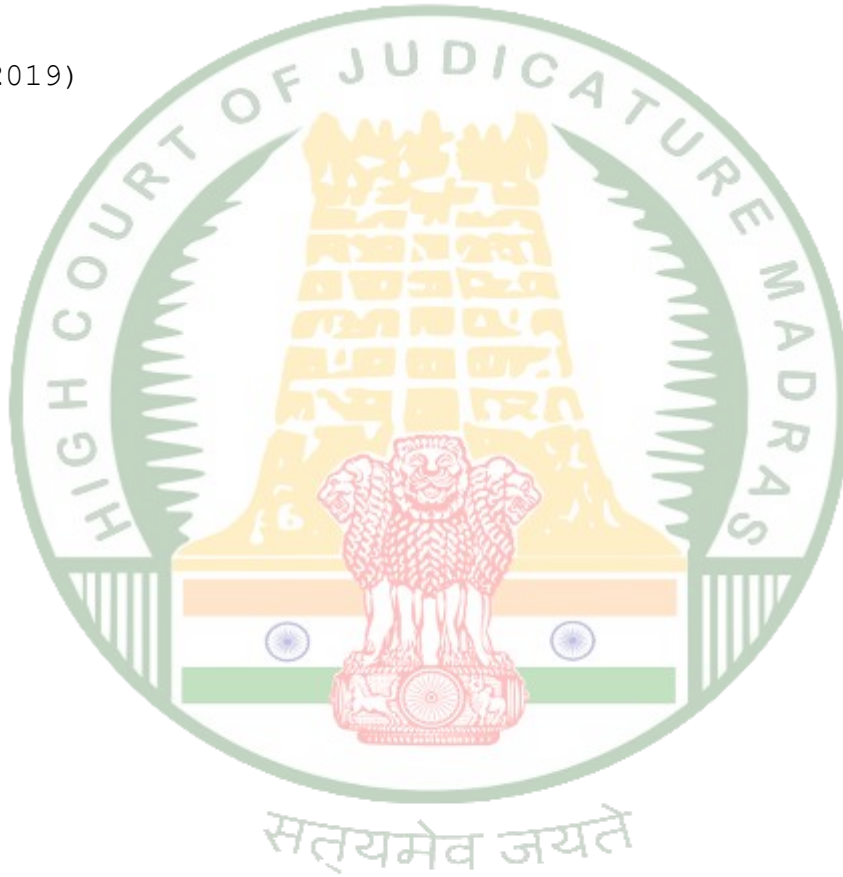
3.The Public Prosecutor,
High Court, Madras.

+1cc Mr.J.Prakasam, Advocate SR.81522

+1cc Mr.N.Sanjeev Kumar, Advocate SR.80500

H.C.P. No. 858 of 2019

PP (CO)
CB(31/10/2019)



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