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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2566 of 2019

L.Prem Anandan

.. Petitioner

Vs.

1. Deputy Commissioner of Police,
St.Thomas Mount Range,
Chennai City Police,
Chennai-600 016.

2. Asst. Commissioner of Police,
Chennai City Police,
Madipakkam Range,
Chennai-600 091.

3. Inspector of Police,
S-8 Adambakkam Police Station,
Adambakkam,
Chennai-600 088.

4. S.P.Balaiah

5. B.Vijayalakshmi

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus to direct the third respondent to produce the petitioner's minor children, namely (1) L.P.Shanmugaraju (aged about 10 years) and (2) L.P.Kathirvelan (aged about 3 years) before this Court from the custody of the respondents 4 and 5 and hand over to the petitioner.

For petitioner : Prof.M.Udaya Bhanu

For respondents: Mr.R.Prathap Kumar, Addl.P.P.

for RR-1 to 3

M/s.R.S.Kirubakaran & K.Manikandan

for RR4 & 5



ORDER

(The Order of the Court was made by R.Subbiah,J)

This Habeas Corpus Petition is filed praying for issuance of a Writ of Habeas Corpus to direct the third respondent to produce the petitioner's minor children, namely (1) L.P.Shanmugaraju (aged about 10 years) and (2) L.P.Kathirvelan (aged about 3 years) before this Court from the custody of the respondents 4 and 5 and hand over them to the petitioner.

2. The petitioner is a practising Advocate. He married one B.Shanthi, daughter of S.P.Balaiah on 16.05.2008 and due to their wed-lock, two children (detenus) were born, as named above. The petitioner's wife committed suicide on 12.07.2019. Taking advantage of the same, the petitioner's mother-in-law, father-in-law and brother-in-law took the petitioner's children to their custody without the permission of the petitioner. They are threatening the petitioner and after the death of the petitioner's wife, criminal case has also been filed against the petitioner under Section 498-A and 306 IPC, vide F.I.R.No.398 of 2019. The petitioner filed anticipatory bail petition on 25.07.2019 in CrI.O.P.No.19931 of 2019, which was dismissed on 13.09.2019. After dismissal of the said anticipatory bail petition, he filed second anticipatory bail petition in CrI.O.P.No.26687 of 2019 on 01.10.2019. At the time of arguments, the Honourable Judge orally instructed the Government Advocate not to arrest him. In the meanwhile, on 09.10.2019, the respondent-Police arrested and remanded him to jail on 09.10.2019. The third respondent-Police had taken the petitioner's house keys and cell phone with him. The children were illegally taken away from the custody of the petitioner and the respondents 4 and 5 did not allow the petitioner's children to speak with him. On 05.11.2019, the petitioner was released on bail with condition to sign in the Police Station daily at 10.30 a.m. and on 08.11.2019, he went to the Police Station and signed in the Register. Hence, seeking production of his children (detenus), the petitioner has filed the present Habeas Corpus Petition.

3. When the Habeas Corpus Petition is taken up for consideration today, respondents 4 and 5 appeared before us. We have enquired them and they told that they are the grandparents of the minor children and also submitted that one of the children, namely the son of the petitioner is a witness in the criminal case. They have said that they are only taking care of the children of the petitioner and the children are not under illegal custody with anyone. Under such circumstances, they are not inclined to give the custody of the minor children of the petitioner, to the petitioner. We have also enquired the petitioner.



4. Be that as it may. The respondents 4 and 5 are none other than the grandparents of the detenus and the minor children are not in the illegal custody with anyone. Though the learned counsel for the petitioner relied upon the factual aspects of the matter and also relied on a decision of the Supreme Court in the case of Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others in Crl.A.No.838 of 2019 (arising out of S.L.P.(Crl).No.1675 of 2019), dated 06.05.2019, the same are totally different from the facts of the present case. Hence, we are not inclined to entertain this Habeas Corpus Petition, which is accordingly dismissed, with liberty to initiate appropriate legal proceedings before appropriate forum in regard to the custody of the minor children of the petitioner.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

CS

To

1. Deputy Commissioner of Police,
St.Thomas Mount Range,
Chennai City Police,
Chennai-600 016.

2. Asst. Commissioner of Police,
Chennai City Police,
Madipakkam Range,
Chennai-600 091.

3. Inspector of Police,
S-8 Adambakkam Police Station,
Adambakkam,
Chennai-600 088.

4. The Public Prosecutor,
High Court, Madras

+1 CC to Prof.M.Udaya Bhanu, Advocate sr 104797

+1 CC to Mr.K.Manikandan, Advocate sr 105481.

H.C.P.No.2566 of 2019

VSNI (CO)
SP(19/12/2019)