

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

The Honourable Mr. Justice M.M.SUNDRESH
and

The Honourable Mr. Justice RMT.TEEKAA RAMAN

Habeas Corpus Petition No.2362 of 2018

Dr.Gokulakrishnan Jagan

... Petitioner

vs.

1. State rep. by

The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

2. The Inspector of Police,
SRMC Police Station,
Porur, Chennai.

3. Dr.Selvizhi Subramanian

4. A.Subramanian

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the Respondents to produce the bodies of Petitioner's daughters Miss Aruhi, Female aged about 10 years and Miss Nila, Female, aged 6 years, before this Court and handover to the Petitioner.

For Petitioner : Dr.Gokulakrishnan Jagan,
Party-in-Person

For Respondents 1 & 2 : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

For Respondents 3 & 4 : Mr.Sundar Mohan,
for Mr.M.Suresh

WEB COPY
O R D E R

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

The Petitioner is the father of two minor girls, aged 10 and 6, respectively, who are detenues herein. He has come up with this Petition seeking production of the detenues and hand over them to him from the custody of the 3rd Respondent, who is none other than his wife.

2. The Petitioner, who appears as a Party-in-Person, submitted that, without his consent, his children were taken away by the 3rd Respondent. It was on the premise that they are going to stay there for quite a shorter time. However, contrary to the promise made, the children were taken to United Kingdom and got admission in School. Therefore, he prayed that this Court will have to pass appropriate orders.

3. Learned counsel appearing for Respondents 3 and 4 submitted that the allegations made against the 3rd Respondent are not true. However, there is no difficulty for the Petitioner to have custody of the children, whenever he visits United Kingdom, which is subject to the caveat that the Petitioner will have to give and he has to find out the convenience of the 3rd Respondent and the children.

4. Learned counsel appearing for Respondents 3 and 4 has relied on the e-mail sent by the 3rd Respondent, which reads thus:

" ...
Please find I'm always ready and willing to allow him to visit my children (suiting the convenience of my children too). Currently, he speaks to my children on Skype on a daily basis, he manages to speak to them 4 - 5 times/day, both in the morning, evenings, nights when they return from school.

If my husband is willing to meet our children, he could inform us sufficiently beforehand, so that children took can plan their suitability to meet him. He is aware of their school holiday dates, etc.

So, whenever he visits the UK, I am ready and willing to given the children his visitation.

...
We are not visiting India for now, as we have other communication booked during their next school annual holidays in 2020 August."

5. A copy of the aforesaid e-mail has also been given to the Petitioner. We are not inclined to go into the disputed question of fact, as to whether the children were taken, with or without the consent of the Petitioner, and if so, under what situation.

6. Suffice it is to note that for a period of 12 months, the children are with the 3rd Respondent. Inasmuch as factual adjudication is required, which would involve not only the

Petitioner and the 3rd Respondent, but also their children, we are not inclined to conduct a roving enquiry with respect to the custody of the children. However, by taking note of the e-mail sent, we would only direct the Petitioner to give prior intimation to the 3rd Respondent about his visit to the United Kingdom and the convenient dates for custody of the children with him.

7. In view of the strained relationship, there is no possibility of the Petitioner staying with the 3rd Respondent. Therefore, the Petitioner can have the custody of his children as and when he visits United Kingdom (U.K.), subject to the convenience of his children, without affecting their education and extra-curricular activities. The convenience of the 3rd Respondent would pale into insignificance. In such case, the children would be safe in the custody of the Petitioner, who is their father.

8. We also note that the Petitioner is in touch with his children, by speaking to them on Skype. In such view of the matter, the 3rd Respondent shall facilitate the custody of the detainees with the Petitioner at least for a few days of his stay in U.K., after taking into account the convenience of the children, with respect to their education and extra-curricular activities. We hope and trust that the 3rd Respondent acts in tune with the e-mail sent by her, as recorded above.

9. This Habeas Corpus Petition is disposed of with the above direction and observation.

Sd/-

Assistant Registrar (insp cell)

//True Copy//

Sub Assistant Registrar

(aeb)

TO:

1. THE COMMISSIONER OF POLICE, GREATER CHENNAI, VEPERY, CHENNAI.
2. THE INSPECTOR OF POLICE, SRMC POLICE STATION, PORUR, CHENNAI.
3. DR. SELVIZHI SUBRAMANIAN, FLAT NO. 1204, A, BLOCK, KG SIGNATURE CITY, CHENNAI BYPASS ROAD, ADAYALMAPATTU, CHENNAI 95
4. THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

+1cc to Mr. M. Suresh, Advocate SR.No. 88464

+1cc to Mr. Gokulakrishnan, Advocate SR.No. 88462

H.C.P.No.2362 of 2018

A.SK(03/12/2019)