



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED :31.07.2019  
CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**  
**and**  
**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

H.C.P (MD) No.612 of 2019

A.Syed Rahmadhulla

... Petitioner

Vs.

1.The Superintendent of Police,  
Virudhunagar District.

2.The Deputy Superintendent of Police,  
Sivakasi Division,  
Virudhunagar District.

3.The Inspector of Police,  
Sivakasi Police Station,  
Virudhunagar District.

4.A.Syed Ibrahim

5.S.Azizbanu @ Malarkodi ... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, directing the respondents 1 to 5 to produce the body of the petitioner's minor daughter, namely, Dhasbika Begum, D/o.A.Syed Rahmathulla, aged about 12 years before this Court and hand over the custody of the detinue to the petitioner.

For Petitioner : Mr.A.K.Manickam

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

Mr.S.M.Anantha Murugan  
for R.4 & R.5

ORDER

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The petitioner claims to be the biological father of the minor detinue, namely, Dhasbika Begum, aged about 12 years (DOB - 23.11.2006), alleging illegal custody and detention of his daughter

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at the hands of his own brother, namely, the fourth respondent and sister-in-law, namely the fifth respondent, came forward to file this Habeas Corpus Petition.

2. The detinue is produced before this Court and on enquiry, she would state that she was born on 23.11.2006 and at present, she is studying eighth standard and all along, she continues to remain with respondents 4 & 5.

3. Mr.A.K.Manickam, learned Counsel appearing for the petitioner has drawn the attention of the Court to the typed set of papers and would submit that admittedly, the petitioner is the biological father of the minor detinue and as such, the detinue has been kept under illegal detention and custody by the respondents 4 & 5 and therefore, prays for appropriate orders as to the entrustment of custody of the minor detinue to the petitioner.

4. Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State, on instructions, would submit that so far no case has been registered as it is purely a family dispute.

5. Mr.S.M.Anantha Murugan, learned Counsel appearing for respondents 4 & 5 has drawn the attention of this Court to the typed set of papers dated 30.07.2019 and would submit that there was a deed of adoption on 01.01.2007 entered into by the petitioner and his wife with the respondents 4 & 5, wherein, the petitioner has totally given his rights as father in respect of the minor detinue and even assuming that the said adoption deed is not valid in the eye of law, the fact remains that right from the date of birth, the minor detinue continues to be under the custody of respondents 4 & 5 and she is also educated and on instructions, would further submit that when the minor detinue attained puberty, a function was organized, wherein the petitioner and his wife had also participated.

6. It is also brought to the knowledge of this Court by the learned Counsel for respondents 4 & 5 that G.W.O.P.No.69 of 2019 has been filed by them before the District Judge, Virudhunagar at Srivilliputhur, praying for permanent custody of the minor detinue and in the light of the pending legal proceedings, the parties may be granted liberty to work out their remedy and prays for dismissal of this Habeas Corpus Petition.

7. In response to the same, the learned Counsel for the petitioner prays for visitation rights for the petitioner and his wife, being the biological parents.

8. This Court has paid it's anxious consideration to the rival submissions and also perused the documents placed on record.



9. It *prima facie* appears that the detenue continues to be under the custody of the respondents 4 & 5 and when this Court, during the course of interaction, has put a specific question as to her preference, she had indicated that she wants to remain with respondents 4 & 5. However, the said fact cannot be taken into consideration for the disposal of this Habeas Corpus Petition, for the reason that a comprehensive legal proceedings in terms of law is pending in G.W.O.P.No.69 of 2019 on the file of the District Judge, Virudhunagar at Srivilliputhur. In the said proceedings, the petitioner and his wife are arrayed as respondents and therefore, the concerned parties are at liberty to work out their remedy in the said proceedings.

10. As regards visitation rights, the respondents 4 & 5 have no serious objections, however, they express apprehension that under the guise of seeing the minor detenue, the petitioner and his wife may create some problem and on account of the same, they may be put to hardship and difficulty. However, it is for the respective learned Counsel for the parties to workout something as to the visitation right.

11. It is a well settled position of law that the interest and welfare of the child is of paramount importance and in the light of the fact that a comprehensive civil proceedings is pending, as stated above, this Court is not inclined to pass any positive order in favour of the petitioner for entrustment of the custody of the minor detenue. As regards visitation rights, the respective learned Counsel for the parties undertake that they would sit together and arrive at an amicable solution in that regard.

12. With the above observations, this Habeas Corpus Petition stands disposed of. It is made clear that the observations made herein are only for the purpose of disposal of this Habeas Corpus Petition and this Court has not touched upon the merits of the proceedings pending in G.W.O.P.No.69 of 2019, on the file of the District Judge, Srivilliputhur at Virudhunagar.

Sd/-  
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Superintendent of Police,  
Virudhunagar District.



2.The Deputy Superintendent of Police,  
Sivakasi Division,  
Virudhunagar District.

3.The Inspector of Police,  
Sivakasi Police Station,  
Virudhunagar District.

4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+2 CC to M/s.S.M.ANANTHA MURUGAN, Advocate ( SR-79044[F] dated  
01/08/2019 )

+1 CC to M/s.A.K.MANICKAM, Advocate ( SR-79073[F] dated 01/08/2019 )

H.C.P (MD) No.612 of 2019  
31.07.2019

JM/09.08.2019/4P-8C