

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 556 of 2020

K.Vasuki

... Petitioner

-vs-

1. State of Tamil Nadu
Rep. by the Superintendent of Police,
Villupuram District @ Villupuram Town.
2. The Inspector of Police (L&O),
All Women Police Station,
Villupuram Town & District.
3. The Inspector of Police (L & O)
Vikkiravandi Police Station, Vikkiravandi,
Villupuram District.
4. A.Manohar
5. Tamilselvan
6. Umadevi
7. District Child Protection Officer,
District Child Protection Unit,
No.156, Sarathamabal St,
Nithyanantha Nagar, Vazuthureddy,
Villupuram-605 401.

... Respondents

(R6 is impleaded suo motu as per order in
H.C.P.No.556 of 2020 dated 10.03.2020
R7 is impleaded suo motu as per order in
H.C.P.No.556 of 2020 dated 27.07.2020)

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus directing the 2nd and 3rd respondents' Police to produce the petitioner's brother's son-Minor child S.Kavipriyan (aged about 12 years) S/o.Mr.Senthamilvelan, before this Court from the custody of the 4th and 5th respondents and hand over him to the petitioner.

For Petitioner : Mr.K.Gajendiran

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor
for R1 to R3
Mr.K.Elangovan for R4 & R5
Mr.Kothandapani for R6

ORDER

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

This habeas corpus petition has been filed by the paternal aunt of the detenu, who is aged about 12 years, seeking his custody from the private respondents, on the premise that he has been forcibly taken away from the custody of his father.

2.Learned counsel appearing for the petitioner submitted that the detenu/minor child was actually living with the father for quite some time. Thereafter, he was living with the petitioner, who is none other than his paternal aunt. However, by force, the detenu has been taken away. The sixth respondent, who is the mother of the detenu, is not mentally stable. Therefore, appropriate orders will have to be passed in this regard, especially, by directing the said sixth respondent to undergo the medical test for her mental condition.

4.Learned counsel appearing for the private respondents, while denying the said allegation, submitted that it is not correct to state that the detenu has been forcibly taken away nor the sixth respondent is mentally unstable. The reports filed before this Court by the Child Welfare Committee and the Psychiatrist would clearly indicate the preferred choice of the detenu. Hence this petition will have to be dismissed.

5.We do not wish to go into the submissions made. We are concerned with the interest of the child which is paramount. Prima facie, reports would suggest that the child would like to continue to be with the private respondents including the sixth respondent. Therefore, we do not wish to undertake the exercise as sought for by the petitioner to make the sixth respondent to undergo any medical test. We are primarily concerned with the comfort zone of the detenu. The detenu is aged about 12 years. Therefore, he is not of tender age.

6.The issues on facts can only be finally adjudicated before the appropriate Court rather invoking the jurisdiction of this Court under Article 226 of The Constitution of India. Perhaps,

adducing evidence would be required apart from marking relevant documents.

7.However, we concur with the learned counsel appearing for the petitioner that the father of the detenu has to be permitted to have the custody of the child whenever he returns back to the country as he is working abroad.

8.Learned counsel appearing for the private respondents also fairly submitted that appropriate orders can be passed by the Court without affecting the interest of the detenu.

9.Considering the above, we are inclined to give limited relief to the father of the child to have the custody during either Saturday or Sunday of every week in which he is present, between 10.00 a.m. and 5 p.m. at his residence. This arrangement is to continue till appropriate orders are obtained either by the petitioner or by the father of the detenu before the jurisdictional Court.

10.As and when the father of the detenu seeks custody, prior notice will have to be given to the sixth respondent before three days of seeking such custody. We further make it clear that the observations are only prima facie in nature and therefore will not have any bearing on the orders to be passed by the appropriate Court. Thus, the said Court can decide the matter on its own merits.

11.With the above direction and observation, this habeas corpus petition stands disposed of.

Sd/-

Assistant Registrar(L.A)

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Sub Assistant Registrar

To

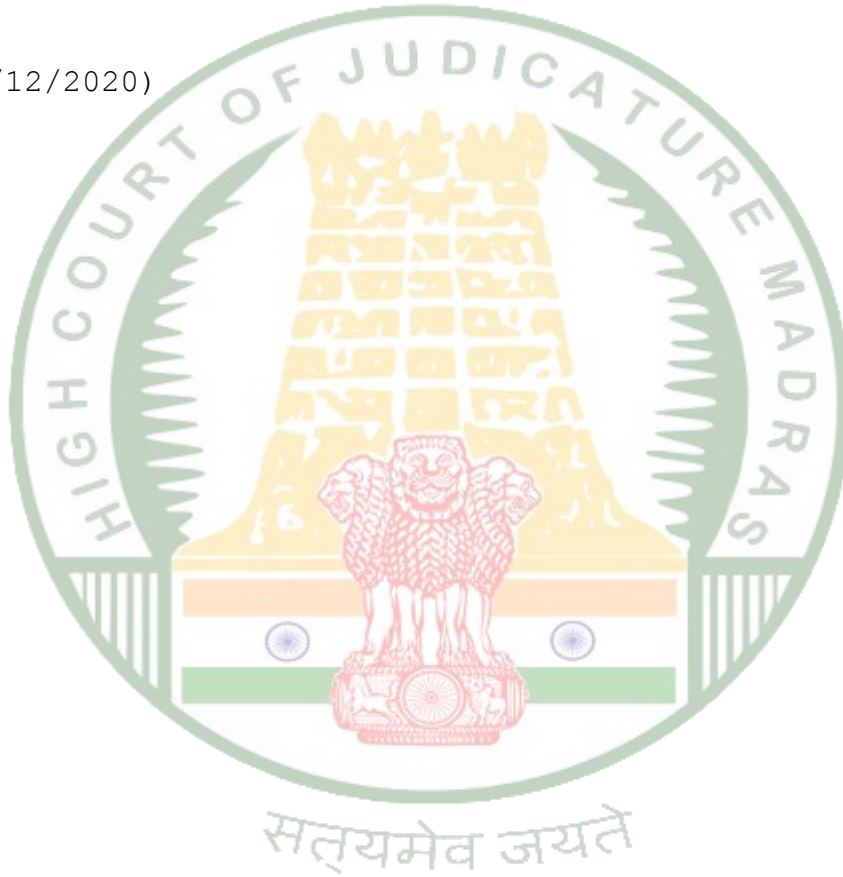
1. The Superintendent of Police,
Villupuram District @ Villupuram Town.
2. The Inspector of Police (L&O),
All Women Police Station,
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3. The Inspector of Police (L & O)
Vikkiravandi Police Station, Vikkiravandi,
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4. The District Child Protection Officer,
District Child Protection Unit,
No.156, Sarathamabal St,
Nithyanantha Nagar,
Vazuthureddy, Villupuram-605 401.

5. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 556 of 2020

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