

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

AND

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

H.C.P. No. 2045 of 2020

Sheikh Dawood

..Petitioner

Vs.

1. The Superintendent of Police,
Nagapattinam.

2. State by
The Inspector of Police,
All Women Police Station,
Nagapattinam.

3. Amanullah

4. A. Asia Mariam

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Habeas Corpus to direct the 2nd respondent to produce the petitioner's baby Nasrin aged about 5 months, before this Hon'ble Court from the custody of the second and third respondents and hand over to the petitioner.

For Petitioner :: Mr.T. Sai Krishnan

For Respondents:: Mr.R. Prathap Kumar
Addl. Public Prosecutor
for R1 & R2
Mr. Sathish Kumar
For R3

O R D E R

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

The petitioner, who is the father of the minor child, stated to be 5 months, seeks her custody, from the hands of the grandparents, namely, respondents 3 and 4.

2. Learned counsel for the petitioner submitted that respondent Nos. 3 and 4 are aged and therefore, they cannot take care of the minor child. Though the petitioner is married, he is ready and willing to take care of the child. As there is no

dispute with regard to the fact that he is the father of the child, custody will have to be handed over to him.

3. Learned counsel for respondents 3 and 4 submitted that all along, the child has been taken care of by the grandparents/respondents 3 and 4. The petitioner has abandoned the child and he has filed the present petition after notice was issued seeking maintenance for the child. Hence, this petition will have to be dismissed.

4. We are not inclined to pass any positive direction in this petition. One thing is clear, ie., respondents 3 and 4 are taking care of the child. In such view of the matter, we are not inclined to pass any order as the child is too tender to be taken care of by the petitioner. At this stage, we cannot conduct further enquiry with respect to the capacity of the petitioner along with his newly married wife to take care of the child as it may require further adjudication on facts, which may include examining the parties.

5. In such view of the matter, the Habeas Corpus Petition stands closed giving liberty to the petitioner to approach the jurisdictional Court, if so advised. We make it clear that our observations are only prima facie in nature and therefore, the Court concerned is expected to render its decision on the merits of the case without being influenced by this order. However, the petitioner is permitted to visit the child once in a month, on every first Sunday, between 10 a.m and 12 noon pending appropriate orders from the jurisdictional Court.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Superintendent of Police,
Nagapattinam.

2. The Inspector of Police,
All Women Police Station,
Nagapattinam.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.T.Saikrishnan Advocate SR.NO.39613

H.C.P. No. 2045 of 2020

SDR 18/12/2020