



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.03.2020**

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P.[MD].No.124 of 2020

Kalpana : Petitioner/Mother of Detenue

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Sivagangai District.

2.The Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.

3.Alagu : Respondents/ Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the first and second respondents to produce the body or person of the detenu, namely Minor Arulraj, D/o.Kalpana, aged about 6 years before this Court and hand over the custody of minor child to the petitioner.

For Petitioner : Mr.M.Eswaran

For Respondents 1&2 : Mr.K.Dinesh Babu,
Additional Public Prosecutor

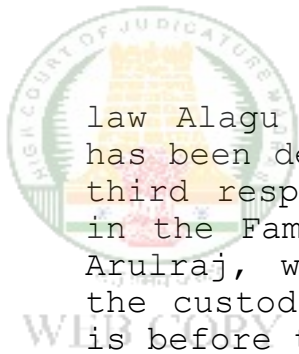
For Respondent No.3 : Mr.Ramasamy

O R D E R

[Order of the Court was made by **P.N.PRAKASH, J.**]

For the sake of convenience, the parties will be referred to by name.

2. Kalpana got married to Ashokraj. Kalpana conceived and during the conception, misfortune fell on her in the untimely death of her husband Ashokraj on 12.01.2014. Kalpana begot a male child on 26.01.2014 and named him Arulraj. It appears that Kalpana re-married and thereafter, her child Arulraj was taken away by her father-in-



law Alagu (the third respondent herein) three years back. Kalpana has been demanding the custody of her child, but in vain. Alagu (the third respondent herein) filed proceedings in G.W.O.P.No.5 of 2018 in the Family Court, Sivagangai, for appointing him as Guardian of Arulraj, which came to be dismissed on 13.08.2019, despite which, the custody of the child was not given to Kalpana. Hence, Kalpana is before this Court in this Habeas Corpus Petition.

3. Pursuant to the directions of this Court, the police have produced the child along with Alagu (the third respondent herein).

4. The learned counsel for the third respondent submitted that as grandparents, they had showered much care and love on the child and they are emotionally attached to the child and prayed that the custody of the child may not be given to Kalpana.

5. However, the learned counsel for Kalpana submitted that Kalpana being the natural mother of the child and further, the Guardian O.P. filed by her father-in-law has also been dismissed by the Family Court, as alluded to above, it will be travesty of justice, if the child is not handed over to his natural mother.

6. We gave anxious consideration to the rival submissions. We heard Alagu (the third respondent herein), his wife and Kalpana.

7. The fact remains that the Guardian O.P. that was filed by Alagu (the third respondent herein) has been dismissed and just because Kalpana had re-married, she would not be legally disentitled to the custody of her child. In such view of the matter, the custody of the child is handed over to Kalpana. The third respondent and his wife can visit the residence of Kalpana at any time to see the child and Kalpana undertakes that she would not deny them visitorship. However, the third respondent and his wife shall not attempt to forcibly take away the child from the custody of Kalpana and in such an event, the second respondent police is directed to take appropriate action and immediately, restore the child to Kalpana's custody.

8. This Habeas Corpus Petition is ordered accordingly.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



SML

To

1.The Superintendent of Police,
Office of the Superintendent of Police,
Sivagangai District.

2.The Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.

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

+1 CC to M/s.M.EASWARAN, Advocate (SR-10285[F] dated 05/03/2020)

Order made in
H.C.P. [MD].No.124 of 2020
Dated: **03.03.2020**

SML

TK/SAR./16.03.2020/3P/5C