



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Wednesday, the Twelfth day of June Two Thousand and Nineteen
CORAM:

The Hon'ble Mr. Justice M. SATHYANARAYANAN
AND

The Hon'ble Mr Justice B. PUGALENDHI
HCP(MD). No.424 of 2019

SWAMINATHAN

... Petitioner

Vs

- 1 THE SUPERINTENDENT OF POLICE,
TUTICORIN DISTRICT, TUTICORIN.
- 2 THE DEPUTY SUPERINTENDENT OF POLICE,
KOVILPATTI DIVISION,
TUTICORIN DISTRICT.
- 3 THE INSPECTOR OF POLICE,
KAYATHAR POLICE STATION,
TUTICORIN DISTRICT
- 4 SHANTHI
- 5 AYYADURAI
- 6 GNANASUBRAMANIAN

... Respondents

Prayer :-

Habeas Corpus Petition is filed 226 of Constitution of India, Writ of directing the Respondents No.1 to 3 to produce the person or body of the detainee namely Minor Parvathi Sankar, S/O. Swaminathan, aged about 10 years from the illegal custody of the Respondents No.4 to 6 before this Honourable Court and handover the custody to the petitioner.

ORDER:-

Habeas Corpus Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. A.UTHAYAKUMAR, Advocate for the Petitioner and of Mr. K.DINESH BABU Additional Public Prosecutor on behalf of the Respondents No.1 to 3 and of Mr.M.MARAN, Advocate for Respondents Nos.4 to 6, this Court made the following order:

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

The petitioner is the father of the minor detenu viz., Parvathy Sankar, aged about 10 years (D.O.B. 30.07.2009) and alleging his illegal detention at the hands of the fourth respondent viz., his mother-in-law, came forward to file this Habeas Corpus Petition.



2. When this matter came up for hearing on 06.06.2019, this Court directed production of the minor detenu and accordingly the minor detenu was produced by the fourth respondent. Both of them were examined. The minor detenu expressed his willingness to continue to reside with the fourth respondent and this may be for the reason that for most of the times parents of minor detenu, who are present before this Court, had handed over the custody to her.

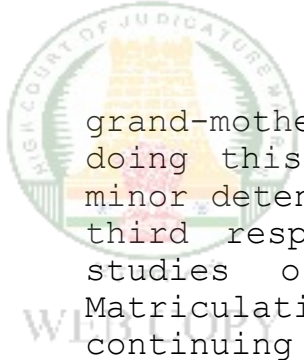
3. The parents of the minor detenu would submit that the detenu is their only son and therefore, being the natural guardian, legally they are entitled to his custody. The fourth respondent would submit that the parents of the minor detenu also stayed with her for some time and thereafter they left him and right from the date of birth, the minor detenu is with her and taking into consideration the wellbeing of the minor detenu, she may be permitted to have his custody in future also.

4. This Court heard the submissions of the learned respective counsel appearing for the parties as well as the learned Additional Public Prosecutor appearing for the State.

5. It is settled position of the law that the parents being the natural guardians are entitled to the custody of the minor detenu. But, it is also to be noted at this juncture that from the date of birth of the detenu, most of the times the minor detenu is in the care and custody of the fourth respondent. It is a case of sentimental issue and if the custody is forcibly handed over to the parents, it is bound to affect the psychology of the minor detenu, who has also exhibited his willingness to stay with his grandmother.

6. The learned counsel appearing for the petitioner would submit that the minor detenu would state that the fourth respondent has discontinued the studies of the minor detenu; however, the said fact is disputed by the fourth respondent/maternal grand-mother of the minor detenu. After persuasion of them, all had agreed that the younger daughter of the fourth respondent/younger sister of the petitioner's wife is married to younger brother of the petitioner and both of them are residing at K.T.C. Nagar, Palayamkottai and the parents of the minor detenu shall stay in her house along the minor detenu for a week and the fourth respondent would agree that he would take the minor detenu to the house of her daughter/sister-in-law of the petitioner on 13.06.2019, so as to enable both the parties to arrive at an amicable arrangement for the custody of the minor detenu.

7. Therefore, the fourth respondent shall take the minor detenu to the house of her daughter viz., Smt. Kasthuri, W/o. Ramiah, M 19, Tamil Nadu Housing Board, K.T.C. Nagar, Palayamkottai, Tirunelveli District (Cell No. 9994465398) from 13.06.2019 till 18.06.2019. It is made clear that parents of the minor detenu as well as maternal



grand-mother of the minor detenu viz., the fourth respondent are doing this exercise considering the welfare and wellbeing of the minor detenu and for taking efforts to solve the issue amicably. The third respondent is also directed to verify as to whether the studies of the minor detenu, who was studying in Adhitya Matriculation School, K.T.C. Nagar, had been discontinued or continuing without any break and file a report in that regard.

8.Call on 19.06.2019 and on that day the parents of the detenu as well as the fourth respondent along with the minor detenu shall remain present before this Court for passing further orders.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)

TO

- 1 THE SUPERINTENDENT OF POLICE,
TUTICORIN DISTRICT, TUTICORIN.
- 2 THE DEPUTY SUPERINTENDENT OF POLICE,
KOVILPATTI DIVISION,
TUTICORIN DISTRICT.
- 3 THE INSPECTOR OF POLICE,
KAYATHAR POLICE STATION,
TUTICORIN DISTRICT
- 4 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

Copy to:

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai
(To list the matter on 19/06/2019)

+1.CC. To MR.A.UTHAYAKUMAR, Advocate in SR No.9691

ORDER DATED : 12/06/2019
HEARING DATE : 19.06.2019

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ORDER

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HCP(MD). No.424 of 2019
Giving direction and etc.
as stated within.