



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.629 of 2020

Kiran Nisha : Petitioner/Mother of the detenu

-vs-

1. The Commissioner of Police,
Madurai City, Madurai.
2. The Inspector of Police(L&O),
Karimedu Police Station,
Madurai -16.
3. The District Child Protection Officer,
District Child Protection Office(Unit),
Plot Nos.91 and 94,
Ashok Nagar Third Street,
Anjal Nagar, Madurai-18.

4.Ushan Khan : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents to produce the body or person of Petitioner's son namely Yahya, son of Usainkhan, male, aged 3 ½ years before this Court from the illegal custody of the fourth respondent and hand over to the Petitioner.

For Petitioner : Mr.M.Mohamed Rafi
For Respondents : Mr.V.Neelakandan
1 to 3 Additional Public Prosecutor
For Respondent-4 : Mr.M.Mohamed Ajees Dheen

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The prayer in the Habeas Corpus Petition is to direct the respondents 1 to 3 to produce the Petitioner's son namely, Yahya, aged 3 ½ years before this Court from the illegal custody of the fourth respondent and hand over the custody of the child to the Petitioner.



2. Heard Mr. Mohammed Rafi, learned counsel appearing for the Petitioner and Mr. V. Neelakandan, learned Additional Public Prosecutor appearing for the respondents 1 to 3 and Mr. M. Mohamed Ajeesdheen, learned counsel appearing for the fourth respondent.

3. It is alleged by the Petitioner that the minor child was with her and he was forcibly taken by the fourth respondent on 28.7.2020. It is also alleged that the fourth respondent had already contracted a second marriage and thereafter no proper care was taken and the child is being neglected by the fourth respondent.

4. On the other hand, it is contended by the learned counsel for the fourth respondent that after the Petitioner has eloped with her lover, the custody of the minor child was handed over to the fourth respondent by the Petitioner's mother and brother. It is further stated that the fourth respondent had already filed G.W.O.P.No.114 of 2020 before the Principal District Judge, Tirunelveli for permanent custody of the minor child and hence this Petition is not maintainable.

5. The learned Additional Public Prosecutor appearing for the respondents 1 to 3 submitted that on the basis of the complaint given by the Petitioner, the second respondent conducted enquiry, in which, the fourth respondent has given a letter, dated 9.7.2020 agreeing to hand over the custody of the minor son to the Petitioner.

6. This is a case of rival claim over the custody of a minor child. The Petitioner is the mother of the child while the fourth respondent is her husband. It is not disputed that the fourth respondent has already approached the Civil Court for permanent custody of the minor child. Hence, at this juncture, it would not be appropriate to render a finding on the disputed question of facts, except granting liberty to the respective parties to work out their remedy either in the pending G.W.O.P.No.114 of 2020 or by filing a fresh case.

7. In that view, the present Habeas Corpus Petition is closed, as no further enquiry is required in this Petition.

Sd/-

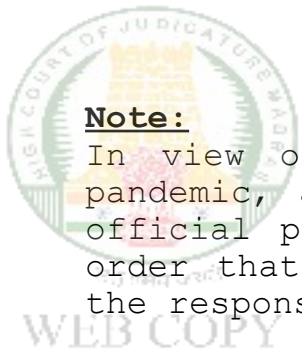
Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar (CS)

vsn



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1. The Commissioner of Police,
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2. The Inspector of Police(L&O),
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District Child Protection Office(Unit),
Plot Nos.91 and 94,
Ashok Nagar Third Street,
Anjal Nagar, Madurai-18.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P. (MD) No.629 of 2020
18.09.2020

PM(CO)
CS(29.09.2020) 3P 5C