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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.719 of 2020

M.Kumar

... Petitioner/Father of the detenu

-vs-

1.The Commissioner of Police,
Madurai.

2.The Inspector of Police,
Teppakulam Police Station,
Madurai Town.

3.R.Ganesan

4.Kasthoori

5.Manikandan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents 1 and 2 to produce the Petitioner's minor son Mahizhan, aged 1 ½ years being the detenu who had taken from the Petitioner's lawful custody as father, before this Court and set him at liberty to hand over to the Petitioner.

For Petitioner : Mr.S.Ramakrishnan

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

For Respondents : Mr.K.M.Karunakaran
3 to 5 for Mr.C.Gangai Amaran



O R D E R

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

This habeas corpus petition has been filed praying this Court for issuance of a direction to the respondents 1 and 2 to produce the Petitioner's minor son namely, Mahizhan, aged about 1 ½ years before this Court and set him at liberty.

2.The Petitioner would claim that he married Muthu Sobana on 20.5.2018 and out of the lawful wedlock, a male child was born to them on 21.2.2019 and he has been named as Mahizhan. He would further state that they were leading their marital life very happily, however, unfortunately, the said Muthu Sobana committed suicide on 28.8.2019.The criminal case registered in Crime No.481 of 2019 under Section 174 of Cr.P.C was closed as 'I' referred to Judicial Magistrate No.I' and further action were also dropped.

3.The grievance of the petitioner is that when he is the natural guardian of the minor child, the custody was taken by his in-laws by force on 22.7.2020. Hence, he lodged a complaint with the respondent Police on 1.8.2020 and the same is registered in CSR.No.395 of 2020. Since no action was taken, he lodged another complaint to the Commissioner of Police, Madurai City on 24.08.2020.

4.Mr.C.Gangai Amaran, learned counsel appearing for the private respondents/ respondents 3 to 5 denied the entire allegations of the Petitioner and according to him, the custody of the minor child was handed over to the grand-parents in April 2020. It is the submission of the learned counsel for the private respondents that for the custody of the minor child, the Petitioner has to approach the competent Civil Court and the present Habeas Corpus Petition is not maintainable.

5.During the hearing, Mr.S.Ramakrishnan, learned counsel appearing for the petitioner would state that for the permanent custody of the minor child, the Petitioner is ready to approach the Civil Court, but the Petitioner being the natural guardian of the minor child can be permitted to have visitation rights.

6.In reply, the learned counsel appearing for the private respondents/respondents 3 to 5 would state that they have no objection for the Petitioner to visit the minor child every sunday between 10.00 a.m. And 2.00 p.m.

7.In the light of the above statement made by the learned counsels appearing on either side, this Habeas Corpus Petition is closed, with liberty to the Petitioner to approach the competent Civil Court for the custody of the minor child. In the meantime, as accepted by the learned counsel appearing for the private respondents, the petitioner is permitted to have the visitation



right to visit the minor child on every Sunday between 10.00 a.m to 2.00 p.m.

Sd/-

Assistant Registrar (CS I)

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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,
Madurai.
- 2.The Inspector of Police,
Teppakulam Police Station,
Madurai Town.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.719 of 2020

01.12.2020

PK (CO)

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