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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

H.C.P.No.464 of 2021

Hari Hara Sudhan
S/o.R.Janakiraman

.. Petitioner

Vs.

1.The Superintendent of Police,
The District Police Office,
Chengalpet.

2.The Inspector of Police,
D1, Town Police Station,
Old Bus Stand Chengalpet,
Pincode - 603 001.

3.N.Swathi
D/o.Nandhagopal

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing respondents herein to produce the body and person of the petitioner's son namely Minor.H.Vikas, aged about 8 years before this Court and handover him to the custody of the petitioner.

For Petitioner : Mr.Rajendran Raghavan

For Respondents: Mr.R.Muniyapparaj
Government Advocate[Crl.side] [R1 & R2]

ORDER

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

This petition has been filed seeking a direction to respondents herein to produce the body and person of the petitioner's son namely Minor.H.Vikas, aged about 8 years, before this Court and handover him to the custody of the petitioner.



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2. On 25.03.2021, this Court has passed the following order:

'The Habeas Corpus Petition has been filed seeking a direction to the respondents to produce the detenu, namely, H.Vikas, aged about 8 years and hand over him to the custody of the petitioner, who is the father of the detenu.

2. Learned Counsel for the petitioner would submit that the marriage between the petitioner and the 3rd respondent was solemnized on 22.05.2013 and out of the said wedlock, a male child, namely Vikas was born to them on 07.02.2014. While so, due to some difference of opinion that arose between the parties, on 21.10.2018, the 3rd respondent wife deserted the petitioner-husband and left the matrimonial home along with their son Vikas to her parental home at Mettu Street, Chengalpet. Learned Counsel would further submit that on 05.11.2018, the 3rd respondent-wife, left the parental home and also deserted her son-detenu and since then, the petitioner has been taking care of his son-detenu-Vikas and educating him who is presently studying III Standard in Prasan Vidya Mandir School, Mamandur near Chengalpet. Learned Counsel would also submit that after a long gap of 3 years, the 3rd respondent has filed a petition seeking divorce in HMOP.No.1652/2020 on the file of the VII Additional Family Court, Chennai against the petitioner. During the pendency of the said divorce case, the 3rd respondent along with two other strangers appear to be hired, barged into the house of the petitioner and after attacking his parents, took away the child detenu forcibly which is not permissible in law. Learned Counsel for the petitioner would further submit that if the 3rd respondent has got any right, she can very well work out the same in the manner known to law, without taking the law on her own hands. Therefore, apprehending risk and danger to the safety of the small child detenu who was also deserted by her mother-3rd respondent long time back, the petitioner has been advised to approach this Court by filing the present Habeas Corpus Petition.

3. Mr.R.Prathap Kumar, learned Additional Public Prosecutor, who takes notice for the official respondents 1 and 2 would submit that it appears that there is some matrimonial dispute between the petitioner and the 3rd respondent who are husband and wife and in that battle, the child has been taken away forcibly by the mother using some strangers from the custody of the petitioner-father.



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4. Mr. Govindarajulu, learned Counsel who takes notice for the 3rd respondent would submit that the anguish of the 3rd respondent is that the petitioner has not even treated the 3rd respondent -wife decently, therefore, she has been living separately with her son detenu Vikas. Learned Counsel would further submit that the 3rd respondent is ready to produce the child-detenu Vikas before this Court, who will narrate the entire episode and the behavior and conduct of the petitioner and the 3rd respondent.

5. List the matter on 26.03.2021 at 2.15 p.m. before the Conference Hall, High Court, Madras.

6. Therefore, a direction is issued to the petitioner and the 3rd respondent to present before the Conference Hall attached to this Court on 26.3.2021 at 2.15 p.m. along with their respective Counsels and the learned Additional Public Prosecutor. It is needless to mention that on 26.3.2021 at 2.15 p.m., the 3rd respondent shall present before this Court along with her child detenu Vikas.'

3. It is seen that the third respondent had initiated divorce proceedings in H.M.O.P.No.1652 of 2020 in the Family Court and the same is pending. Today, the third respondent is present along with her child via Video Conferencing from the office of her counsel. When enquired by us, she stated that she has no objection for the petitioner taking the child during week ends and dropping him back in her house.

4. Learned counsel for the petitioner also agreed for this interim arrangement.

5. As an interim measure, we permit the petitioner to take the child from the third respondent's residence at No.159/161, Mettu Street, Chengalpattu - 603002, Mobile No.: 9952595551, at 10.00 a.m. on every Saturday and drop back the child at 06.00 p.m. immediately on the succeeding Sunday. If there is any violation of the order, both the parties can approach the second respondent police for help. We make it clear that it is purely an interim arrangement and it is open to the parties to approach the jurisdictional Court for guardianship or obtain orders in the pending H.M.O.P.No.1652 of 2020 with regard to visitation and custody of the child. This order of ours will not stand in the way of appropriate orders being passed with regard to the visitation and custody of the child by the Court below.



With the above direction, this Habeas Corpus Petition stands closed.

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Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

gm

To

- 1.The Superintendent of Police,
The District Police Office,
Chengalpet.
- 2.The Inspector of Police,
D1, Town Police Station,
Old Bus Stand Chengalpet,
Pincode - 603 001.
3. The Judge,
The VII Additional Family Court,
Chennai in H.M.O.P.No.1652/2020
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Govindaraju, Advocate SR.No.32655

H.C.P.No.464 of 2021

RSI (CO)
RLP(06/08/2021)