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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

H.C.P.No.1130 of 2021

G.R.Aishwarya
W/o.Rajathilak

...Petitioner

Vs

- 1.The Superintendent of Police,
Chengalpet District.
- 2.The Deputy Superintendent of Police,
Maduranthagam,
Chengalpet.
- 3.The Inspector of Police,
Maduranthagam,
Chengalpet District.
- 4.Rajathilak,
S/o.Rajamohan
- 5.Mallika
W/o.Rajamohan
- 6.Rajamohan

...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the third respondent to produce the petitioner's minor child, viz., R.Ashrithan Sairam S/o.Rajathilak, aged about 2½ years, before this Court, from the custody of respondents 4 to 6 and hand over to the petitioner.

For Petitioner : Mr.P.Paul Selvam

For Respondents : Mr.R.Muniyapparaj
Government Advocate [Cr1.side]



O R D E R

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

This petition has been filed seeking a direction to third respondent to produce the petitioner's minor child, viz., R.Ashrithan Sairam S/o.Rajathilak, aged about 2½ years, before this Court, from the custody of respondents 4 to 6 and hand over to the petitioner.

2. It is the case of the petitioner that she got married to Rajathilak (fourth respondent) on 21.04.2016 and was blessed with a male child viz., Ashrithan Sairam, on 25.12.2018. The couple were last residing together at 5/317, Vivekananthar Street, Nanmangalam, Chennai - 600 129. The petitioner is employed in Canara Bank, Maduranthagam Branch and her husband is an Engineer in the Public Works Department. That being so, on account of marital discord, they got estranged and the petitioner is now living with her parents at No.3, Rangan Street, Maduranthagam, Chengalpet District - 603 306. While so, the petitioner has alleged that the fourth respondent had forcibly taken away the child from her on 17.07.2021. Aggrieved by which, the petitioner has filed the present petition.

3. On notice, the fourth respondent entered appearance through Mr.R.Vijayaraghavan, Advocate. We directed the petitioner and the fourth respondent to be present before us and also directed the fourth respondent to bring the child with him.

4. The fourth respondent has filed a counter affidavit dated 29.07.2021 refuting the allegations made by the petitioner in her affidavit and making counter allegations against the petitioner.

5. We are not going into these allegations in this Habeas Corpus Petition. Suffice it to say that the fourth respondent has filed a petition in O.P.No.152 of 2021 on the file of District Court, Chengalpet, under the Guardian and Wards Act for custody of the child and also filed divorce proceedings in H.M.O.P.Sr.No.4157 of 2021 on the file of Sub Court, Alandur.

6. Mr.R.Vijayaraghavan, learned counsel for the fourth respondent and the fourth respondent fairly submitted that it would be in the interest of the child, he should not be separated from his mother and graciously, handed over the custody of the child to the petitioner. We place on record our appreciation to Mr.R.Vijayaraghavan, Advocate and Rajathilak for this gesture. Learned counsel further submits that until final orders are passed by appropriate Courts, the fourth respondent may be given visitation rights.



7. We feel that, it would be in the fitness of things, if the fourth respondent, being the father of the child, is given visitation rights, which is purely an ad interim arrangement until appropriate orders are passed by the competent courts either in the guardian and wards proceedings or in the divorce proceedings.

8. Today, the child R.Ashritan Sairam is given custody to his mother, the petitioner. We permit the fourth respondent to visit the child on Saturdays and Sundays and other Government holidays in the house of the petitioner and to spend time with the child. The petitioner shall not cause any obstruction or prevent the fourth respondent from having company of the child. That apart, whenever the fourth respondent wants to see the child via video call, the petitioner shall attend the call and allow the fourth respondent to see the child. It is purely an ad interim arrangement and it is open to the parties to obtain appropriate orders either in the pending guardian and wards proceedings or in the matrimonial proceedings.

9. The petitioner is directed to enter appearance in O.P.No.152 of 2021 on the file of District Court, Chengalpet, immediately, without waiting for receipt of summons from the Court. The District Court, Chengalpet, is directed to complete the proceedings in O.P.No.152 of 2021, as expeditiously as possible, within a period of eight months from the date of first hearing of the case, provided both the parties co-operate and subject to Covid-19 pandemic restrictions.

With the above direction, the Habeas Corpus Petition is disposed of.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

gm

To

1.The District Court,
Chengalpet.

2.The Sub Court,
Alandur.

3.The Superintendent of Police,
Chengalpet District.



4.The Deputy Superintendent of Police,
Maduranthagam,
Chengalpet.

5.The Inspector of Police,
Maduranthagam,
Chengalpet District.

6.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.P.Paul Selvam, Advocate SR.No.37508

H.C.P.No.1130 of 2021

RSI(CO)
RVM(26/08/2021)