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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

H.C.P.No.1626 of 2021

Mogan Sukumaran
S/o.Late Sukumaran

.. Petitioner

Vs.

1. The State of Tamil Nadu
represented by the
Commissioner of Police,
E.V.R.Periyar Salai,
Vepery, Chennai - 600 007.

2. The Inspector of Police,
Nolambur Police Station,
35GG J46, Mogappair Eri Scheme,
Chennai - 600 037.

3. R.Bharathi
W/o.Rajasekaran

4. Geetha Rajasekaran
W/o.Mogan Sukumaran

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the respondents 1 and 2 to produce the detenus, the twin minor children named Lavan and Labin, aged 8 years and presently in the custody of the fourth respondent, a permanent resident at 13E, Vasantha Nagar, Singanallur, Coimbatore-641 005, now at North Carolina USA, Her contact whatsapp Mobile Number at USA:9963423299) before this Court and hand over the custody of the minor children to the petitioner so as to enable the children to continue their education at Chennai.

For Petitioner : Mr.T.C.S.Raja Chockalingam

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor [R1&R2]



O R D E R

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

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2. It is the case of the petitioner that she got married to fourth respondent on 25.06.2011 and through the wedlock, he was blessed with a pair of twins Lavan and Labin, aged 8 years. The petitioner was employed in United States at the time of his marriage with the fourth respondent and his children were born in the United States, on account of which, they are the natural citizens of United States and hold United States passports. According to the petitioner, after his work assignment was over, he came to India with his family and was employed in Hyderabad. It appears that the fourth respondent got a job in United States and despite the petitioner's advice to her not to take up the job, she took up the job and left for United States in the year 2018. The twins were with the petitioner while the fourth respondent was in United States. It is the grievance of the petitioner that the fourth respondent came to India in December 2020 and left for United States with the children on 01.03.2021 saying that she would be back to India in the third week of June 2021, whereas, she continues to stay in the United States and thereby depriving him of his company with the children. On these allegations, the present petition has been filed.

3. Heard Mr.T.C.S.Raja Chockalingam, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor, appearing for the State. Mr.AGD Balakumar, Advocate, Enrl.No.1917/14, Mobile No.99943 88855, entered appearance for the fourth respondent.

4. On notice, the fourth respondent appeared via video conferencing from the United States with the two children and stated that she has come to United States on employment with the full knowledge of the petitioner, that she is presently staying at 4624, apt B, Simsbury Road, Charlotte, NC 28226, Phone No.20187 32585 and that she would return to India after her assignment is over.

5. The fact remains that the two children are U.S. citizens as they were born there and U.S. passport holders. The fourth



respondent further stated that she will come to India with the two children during summer vacation in 2021. She also stated that the petitioner is speaking to the children every weekend via whatsapp video call.

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6. On a conspectus of the facts obtaining in this case, we do not find that the children are in the illegal custody of fourth respondent for issuance of a writ of habeas corpus since custody of the children is with their mother per se cannot be said to be illegal.

Accordingly, this Habeas Corpus Petition is closed with liberty to the parties to work out their remedies in the manner known to law.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Commissioner of Police,
E.V.R.Periyar Salai,
Vepery, Chennai - 600 007.
2. The Inspector of Police,
Nolambur Police Station,
35GG J46, Mogappair Eri Scheme,
Chennai - 600 037.
3. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1626 of 2021

SMI (CO)
K.RK. (26.11.2021)