

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

Coram

The Hon'ble Mr. Justice P.N.PRAKASH  
and  
The Hon'ble Mr. Justice V.SIVAGNANAM

H.C.P. No. 2474 of 2020

K.K.Ramesh

.. Petitioner

Vs.

1.The Commissioner of Police,  
O/o.The Commissioner of Police,  
EVK Sampath Salai,  
Veperi, Chennai - 7.

2.The Inspector of Police,  
G3 Kilpauk Police Station,  
Kilpauk, Chennai - 10.

3.The Inspector of Police,  
All Women Police Station,  
Vadapalani, Chennai.

... Respondents

(R3 impleaded suo motu  
vide order dated 18.12.2020  
in H.C.P.No.2474 of 2020)

4.Sumathy

(R4 is Suo motu impleade as per order  
in HCP.No.2474/2020 dated 19.01.2021)

Prayer:Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus directing the first and second respondents to produce the petitioner's minor son i.e. R.Kamalesh Kannan (aged about 12 years) before this Court and hand over his custody to the petitioner.

For Petitioner : Mr.AL.Namasivayam  
for Mr.R.Sitharthan

For Respondents: Mr.R.Prathap Kumar,  
Addl. Public Prosecutor

ORDER

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

Seeking a direction to the first and second respondents to produce the petitioner's minor son R.Kamalesh Kannan, aged about 12 years before this Court and hand over his custody to the petitioner, the present habeas corpus petition has been filed.

2.It is the case of the petitioner that he got married to Sumathy 13 years ago and have two children through her viz., Kamalesh Kannan, aged about 12 years and Hakshitha, aged about 10 years and both of them are studying in Vani Vidhyalaya Senior Secondary and Junior College, K.K.Nagar, Chennai and they lived together until, on account of marital discord, they got estranged.

3.We are not going into the reasons for their estrangement. The spouses got estranged and Sumathy went to her natal home in Purasawalkam. Under such circumstances, this petition has been filed by the petitioner seeking custody of the child.

4.Today, Ms.N.Renukadevi, Inspector of Police, Vadapalani All Women Police Station, Chennai, Ms.N.Renuka, Sub Inspector of Police, Vadapalani All Women Police Station, Chennai and Mr.M.Magesh, Sub Inspector of Police, G3 Kilpauk Police Station, Chennai are present. They have produced Sumathy and Kamalesh Kannan.

5.We enquired with Kamalesh Kannan, who told us that he loves both his parents and that he would prefer to live with his father and go to school from there. The fact is that Kamalesh Kannan is 12 years old and studying 7th standard. He appears to be well informed and he is able to intelligently answer the questions that were put to him.

6.Taking into consideration the paramount interest of the child, we direct the interim custody of Kamalesh Kannan to the petitioner. However, the petitioner shall drop Kamalesh Kannan in the house of Sumathy every Saturday at 9.00 a.m. and take him back on the next Sunday at 8.00 p.m. This arrangement is made temporarily until steps are taken by the petitioner for filing appropriate petition for custody before the jurisdictional Magistrate, which he shall prefer within a period of one month from today. On such petition being filed, it is open to the said Court to pass appropriate orders, both interim and final, with regard to the custody of Kamalesh Kannan. Until then, the aforesaid arrangement shall continue. The respondent police are

directed to ensure that this arrangement is not violated by both the parties.

7. With the above direction, this habeas corpus petition stands closed.

08.01.2021

This matter having been listed for hearing on Tuesday, the Nineteenth Day of January Two Thousand and Twenty One under the caption "For Being Mentioned" and taken up for hearing in the presence of M/s.AL.Namasivayam, Counsel for Mr.R.Sitharthan, Counsel for the Petitioner and M/s.R.Prathap Kumar, Additional Public Prosecutor for respondent Nos.1 to 3 and the Court made the following order:

On 18.01.2021, learned counsel for the petitioner made a special mention and submitted that when the petitioner went to drop the child in the house of Sumathy in Purasawalkam, the door was found locked. Therefore, this Court directed the listing of the matter today and further directed the police to produce sumathy.

2. Today, Sumathy is present. This Court suo motu impleads Sumathy as fourth respondent.

3. Today, Ms.N.Renukadevi, Inspector of Police, Vadapalani All Women Police Station, Chennai and Ms.N.Renuka, Sub Inspector of Police, Vadapalani All Women Police Station, Chennai are present.

4. Sumathy stated that she is residing in Door No.142/50, Saravana Perumal Street, Purasawalkam, Chennai (Mobile Nos.7550191755 / 9500082434).

5. On 08.01.2021, this Court passed the following order:

Seeking a direction to the first and second respondents to produce the petitioner's minor son R.Kamalesh Kannan, aged about 12 years before this Court and hand over his custody to the petitioner, the present habeas corpus petition has been filed.

2. It is the case of the petitioner that he got married to Sumathy 13 years ago and have two children through her viz., Kamalesh Kannan, aged about 12 years and Hakshitha, aged about 10 years and both of them are studying in Vani Vidhyalaya Senior Secondary and Junior College, K.K.Nagar, Chennai and they lived together until, on account of marital discord, they

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7.With the above direction, this habeas corpus petition stands closed.

6.In continuation of the order dated 08.01.2021, this Court directs the petitioner to drop Kamalesh Kannan at 9.00 a.m. every Saturday in the aforesaid residence of Sumathy and take him back on the ensuing Sunday at 8.00 p.m. As stated in the order dated 08.01.2021, this is purely a temporary arrangement until appropriate interim orders or final orders are passed by the competent Court under the Guardian and Wards Act. As

directed, the petitioner shall file a petition for guardianship within 30 days from the date of receipt of a copy of this order, if not, it is open to Sumathy to approach this Court for appropriate orders.

-s/d-  
Assistant Registrar

True Copy  
Sub-Assistant Registrar

mmi

To

1.The Commissioner of Police,  
O/o.The Commissioner of Police,  
EVK Sampath Salai,  
Veperi, Chennai - 7.

2.The Inspector of Police,  
G3 Kilpauk Police Station,  
Kilpauk, Chennai - 10.

3.The Inspector of Police,  
All Women Police Station,  
Vadapalani, Chennai.

4.The Public Prosecutor,  
High Court, Madras.

5.Tmt.Sumathi  
W/o.Ramesh  
No.142/50 Saravana Perumal Street,  
Purasaiwakkam, Chennai

+1 cc to M/s.R.Sitharthan Advocate sr2315/2021

H.C.P. No. 2474 of 2020

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