

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

Coram

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

H.C.P.No. 2557 of 2020

M.Kokila

.. Petitioner

Vs.

1.The Commissioner of Police,
Commissioner Office,
EVK Sampath Salai,
Vepery, Chennai - 07.

2.The Inspector of Police,
R-10, MGR Police Station,
MGR Nagar,
Chennai - 600 083.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus directing the respondents to produce the petitioner's two minor children namely Y.Pavan, S/o. Yogavan(minor son of the petitioner), aged 9 years and Y.Sathvika Devi, D/o.Yogavan (minor daughter of the petitioner), aged 6 years, before this Court and handover the custody of the said minor children to the petitioner.

For Petitioner
For Respondents

.. Mr.D.Parthasarathy
.. Mr.R.Prathap Kumar
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by P.N.PRAKASH, J.)

It is the case of the petitioner that she got married to Yogavan on 11.07.2020, while she was hardly fifteen years old, at the instance of her mother. After marriage, the couple were blessed with two children Y.Pavan (D.O.B - 09.06.2011) and

Y.Sathvika Devi (D.O.B - 04.11.2014); that on account of the torture meted out to her, she left her matrimonial home on 28.09.2020 along with two children and moved to Guduvancherry; that her mother gave a complaint to R-10 MGR Nagar Police Station against her and during the police enquiry, the children said that they want to be with her and hence the children were sent with her; that her husband Yogavan gave a false complaint to W26 All Woman Police Station, Ashok Nagar and that the Ashok Nagar Police Station had forcibly handed over her two children to her husband and hence the petitioner has filed the present habeas corpus petition.

2. Today, Ms.M.Amutha, Sub-Inspector of Police, W26, All Women Police Station, Ashok Nagar; Ms.D.Saritha, Head-Constable, W26 All Women Police Station, Ashok Nagar; and the petitioner - Yogavan and the two children are present.

3. On instructions, learned Additional Public Prosecutor submitted that on a complaint given by Yogavan, a petition enquiry in C.S.R.No. 128 of 2020 was registered on 19.10.2020 by the W26 All Women Police Station, Ashok Nagar. In the said complaint, Yogavan has stated that his wife Kokila developed illicit intimacy with one Vasanth and that she has eloped with him taking the two children with her.

4. On this complaint, the police started conducting enquiries by tracing the call details of the petitioner and Vasanth. From the tower location, the police were able to locate the presence of Kokila and Vasanth in a flat in Sholinganallur. However, when the police tried to contact Kokila in her mobile phone she had switched off her phone. A little later, Vasanth and another friend came out of the apartments and met the police. They told the police that Kokila and her two children are in a house in Guduvancherry and Vasanth contacted Kokila from his mobile phone. A little later, Kokila came with the two children to the place and from there, all of them were taken to the All Women Police Station, Ashok Nagar.

5. During enquiry, the children very clearly stated that they wanted to go with the father and that the police have videographed the same. Therefore, the father took custody of the two children with the full knowledge of Kokila and is now having them with him.

6. In the affidavit filed by Kokila in support of the present habeas corpus petition, she has stated that she is living in Seshvel Hostel, No.3/17, Poomagal 2nd Street, Ambal Nagar, Ekkattuthangal, Chennai - 32. This clearly shows that she is not living with her mother nor is living in a separate house.

7. In the opinion of this Court, it will not be advisable to make the children be to stay in a hostel with the petitioner. That apart, even in the affidavit, Kokila has not stated anything with regard to the date on which her mother gave police complaint and the date on which she was called for enquiry by the Inspector of Police, All Women Police Station, Ashok Nagar, where the statements of the two children were recorded and video graphed etc etc. She has suppressed all these facts in her affidavit. Thus, prima facie, it does not appear to us that the children are in the illegal custody of their father.

8. In view of the above, the habeas corpus petition stands closed with liberty to the petitioner to work out her remedy in the manner known to law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Commissioner of Police,
Commissioner Office,
EVK Sampath Salai,
Vepery, Chennai - 07.

2.The Inspector of Police,
R-10, MGR Police Station,
MGR Nagar,
Chennai - 600 083.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Parthasarathy , Advocate SR.No. 4876

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A.SK(17.02.2021) .

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