



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

and

**THE HONOURABLE MR.JUSTICE G.ILANGOVAR**

**H.C.P. (MD) No.422 of 2021**

WEB COPY

K.Ramesh

... Petitioner/Husband of  
Father of the Detenues

-vs-

1.The Superintendent of Police,  
Thanjavur District,  
Nagapattinam-Coimbatore-Gundlupet Highway,  
Thanjavur-613 010.

2.The Inspector of Police,  
Pattukottai Police Station,  
Thanjavur District-614 602.

3.Ramya ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus, directing the respondents 1 & 2 to produce the body or person of petitioner's daughter namely Rakshitha, aged 8 years and petitioner's son namely Sai Sanju, aged 3 years, who have been detained under the illegal custody of the 3<sup>rd</sup> respondent before this Court and hand over their custody to the petitioner.

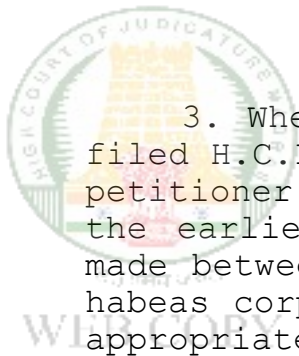
|                |   |                                                  |
|----------------|---|--------------------------------------------------|
| For Petitioner | : | Mr.C.P.Hemkumar                                  |
| For R1 & R2    | : | Mr.K.Dinesh Babu<br>Additional Public Prosecutor |

**O R D E R**

**[Order of the Court was made by K.KALYANASUNDARAM, J.]**

This habeas corpus petition has been filed seeking direction to the respondents 1 & 2 to produce the petitioner's daughter namely Rakshitha, aged 8 years and son namely, Sai Sanju, aged 3 years, who have been detained under the illegal custody of the 3<sup>rd</sup> respondent before this Court and hand over their custody to the petitioner.

2. The petitioner would state that the marriage between him and the third respondent was performed on 06.02.2012 and they are having two children, who are the detenues herein. It is alleged that because of the attitude of the third respondent, he and his parents were not leading a compatible life. It is also stated that he was employed in Dubai and there were frequent quarrels between them, hence, he has filed a divorce petition in H.M.O.P.No.308 of 2019 and the same is pending before the Family Court, Thanjavur.



3. When the divorce petition was pending, the third respondent filed H.C.P.(MD)No.1094 of 2020 against the police officials and the petitioner for custody of the minor children. When it was heard by the earlier Bench, there were allegations and counter allegations made between the petitioner and the third respondent and hence, the habeas corpus petition was closed by observing that it would not be appropriate to pass final order with regard to the custody of the minor children in that case. However, a direction was issued to the Family Court, Thanjavur to refer the HMOP., to the Mediation to explore the possibility of settlement.

4. The learned counsel for the petitioner Mr.C.P.Hemkumar, would state that as per the direction in the earlier H.C.P.(MD) No.1094 of 2020, the matter was referred to Mediation, but it was not settled. Subsequently, the third respondent along with her men entered into the house of the petitioner and took away detainees by force. Hence, a complaint was given to the second respondent and the same is in CSR Stage. Since no action was taken by the official respondents, the petitioner has come up with this petition.

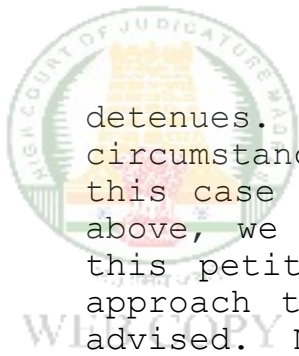
5. The learned counsel for the petitioner further submitted that in the earlier habeas corpus petition, when the first detainee was heard through Video Conferencing, she expressed her willingness to stay with her father, the petitioner herein. Before the Mediation also both children wanted to stay with their father. Since the third respondent has kept the children illegally, the petitioner is entitled for a direction sought for in this petition.

6. Heard the learned Additional Public Prosecutor appearing for the State.

7. It appears that there exists a matrimonial dispute between the petitioner and the third respondent and the petitioner has also filed a case against the third respondent for divorce on the grounds of Adultery and Cruelty. It has been pointed out in the order made in H.C.P(MD)No.1094 of 2020, both the parties have levelled allegations against each other. The learned counsel appearing for the petitioner, repeatedly requested this Court for production of the detainees to ascertain their views to order interim custody till the disposal of the divorce petition.

8. We could not entertain the request of the learned counsel, for the reason that willingness of the children alone cannot be a deciding factor to order interim custody and the Court is expected to look into the other materials also. It is well settled that while exercising jurisdiction under Article 226 of the Constitution of India, the constitutional Courts are not required to render findings on the disputed questions of facts.

9. It is also relevant to point out that the third respondent is not a fit person to be entrusted with the custody of the children than the mother and the natural guardian of the children.



detenues. We are conscious of the fact that in extraordinary circumstances, Habeas Corpus Petition can be entertained, but in this case no such situation is made out. For the reasons stated above, we find no merits in the habeas corpus petition and hence, this petition is dismissed granting liberty to the petitioner to approach the Civil Court to ventilate his grievance, if he is so advised. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

**Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Superintendent of Police,  
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Thanjavur-613 010.
- 2.The Inspector of Police,  
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- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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SJ(CO)  
KB(27.04.2021) 3P 4C