



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 04.10.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN**

**and**

**THE HONOURABLE MR.JUSTICE R. PONGIAPPAN**

**H.C.P. (MD) No.1393 of 2021**

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H.Mohamed Sadam ... Petitioner/Father of the detenues

-vs-

1. The Superintendent of Police,  
Ramanathapuram District.

2. The Inspector of Police,  
Kenikarai Police Station,  
Kenikarai,  
Ramanathapuram District.

3. Sameeha

4. Ramachandran

5. Kannan ... Respondents

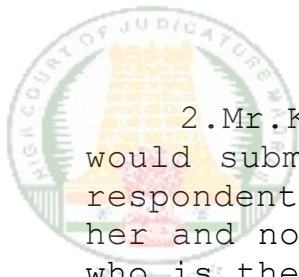
**PRAYER** : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to direct the respondents 1 & 2 to produce the detenues or body of the detenues by name Minor Haja Mohaideen, aged about 5 years, son of Mr.H.Mohammed Sadam and Minor Aathara aged about 3 years daughter of Mr.H.Mohammed Sadam who are under the illegal custody of the respondents 3 & 4 herein and handover custody to the petitioner.

|                |   |                              |
|----------------|---|------------------------------|
| For Petitioner | : | Mr.K.R.Laxman                |
| For R1 & R2    | : | Mr.S.Ravi                    |
|                |   | Additional Public Prosecutor |
| For R3 & R4    | : | Mr.Sam Eugene                |

**O R D E R**

**(Order of the Court was made by V. BHARATHIDASAN, J.)**

This Habeas Corpus Petition has been filed by the father of the detenues namely, Minor Haja Mohaideen, aged about 5 years and Minor Aathara aged about 3 years, who are under the illegal custody of the respondents 3 and 4 herein and handover custody to the petitioner.



2.Mr.K.R.Laxman, learned counsel appearing for the petitioner would submit that the third respondent has eloped with the fifth respondent and also forcibly taken the minor children along with her and now, the children are in their custody and the petitioner, who is the father of the children, is very much eager to join with them. Even though a complaint has been lodged before the second respondent, no action has been taken by the second respondent and therefore, the petitioner has filed the present Habeas Corpus Petition.

3. Mr.Sam Eugene, learned counsel for the respondents 3 and 5 would submit that it is matrimonial dispute between the petitioner and the third respondent and the third respondent has already filed a suit for dissolution of marriage in O.S.No. 85 of 2021 on the file of the District Munsif, Ramnad and the said suit is pending. That apart, the third respondent has not eloped with the fifth respondent and the children are in the custody of the third respondent. The third respondent is the mother/natural guardian of the children and hence, the custody of her children cannot be treated as illegal custody.

4. We have heard the submissions made on either side and perused the materials available on record.

5. It is seen that there is a matrimonial dispute between the parties and a suit is also pending before the civil court, we are not concerned about whether the third respondent eloped with the fifth respondent or not and that disputed question of fact need not gone into in this HCP. The detainees are minors and they are under the custody of their mother and therefore, their custody cannot be treated as illegal custody. If the petitioner wants the custody of the minor children, it is always open to him to approach the civil court seeking custody in the manner known to law.

6. In the result, the Habeas Corpus Petition is dismissed.

Sd/-

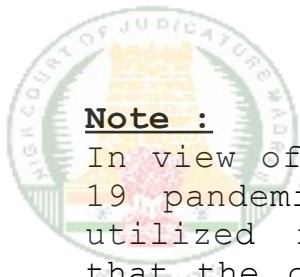
Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

cm/csm



**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,  
Ramanathapuram District.
2. The Inspector of Police,  
Kenikarai Police Station,  
Kenikarai,  
Ramanathapuram District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-31298[F] dated 05/10/2021)

**H.C.P. (MD) No.1393 of 2021**  
**DATED : 04.10.2021**

SS (CO)  
SB(21.10.2021) 3P 5C