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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

H.C.P.NO.539 OF 2022

P.Shanmugapriya

.. Petitioner/
Mother of the Detenue

Vs.

1. The Superintendent of Police
Gandhiji Road
Marapalam
Erode District 638 001
2. The State rep. by
The Inspector
All Women Police Station
Erode 638 112
3. S.Bharani

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to direct the 2nd respondent to produce the petitioner's daughter viz., B.S.Kirithanya, aged about 5 years, who is now in the illegal detention and custody of the 3rd respondent before this Court.

For Petitioner	:	Mr.M.Ravi for Mr.P.Rajaganapathy
For RR 1 and 2	:	Mr.R.Muniyapparaj Additional Public Prosecutor
For R3	:	Mr.S.Jeyakumar



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because we found that the child went freely to the petitioner and got attached to her. While we were openly exploring various possibilities for giving visitation rights, the third respondent and his counsel Mr.S.Jayakumar fairly came forward with the proposal to drop the child every Sunday morning in the house of the petitioner at Kancheepuram and take back the child in the evening. The third respondent also gave an undertaking to that effect. Hence, as an interim arrangement, the third respondent shall drop the child in the residence of the petitioner at Kancheepuram on every Sunday at 9.00 a.m. and take back the child at 6.00 p.m. If either party has any grievance against each other, they may approach the Inspector of Police, All Women Police Station, Erode, who shall ensure that the order passed by this Court is successfully complied with by both the parties.

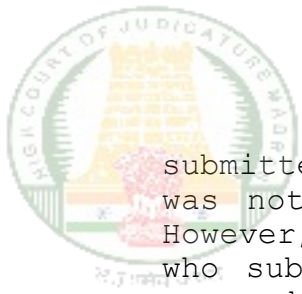
7. The child, being a girl, aged less than seven years, should normally be with its mother, especially, when the third respondent is denying the very marriage. But, we do not want to uproot the child from the family of the third respondent and give custody to the petitioner. Instead, we direct the third respondent to approach the jurisdictional Court and file a petition for appointing him as the guardian of the child, within two months from today and the said Court may pass orders without being influenced by what has been stated above. The said Court may even modify the above directions of this Court, bearing in mind, the paramount interests of the child. Until then, the parties are directed to comply with the above directions.

Call on 28.04.2022."

2. When the matter was taken up for hearing on 28.04.2022, we directed the 3rd respondent to bring the child viz., B.S.Kirithanya to the Court on 29.04.2022. Accordingly, today, the petitioner, the 3rd respondent and Kirithanya were present before us.

3. Learned counsel for both sides submitted that the directions issued by this Court in the order dated 08.04.2022 were complied with by the 3rd respondent, in that, the 3rd respondent brought Kirithanya to Kanchipuram on 17.04.2022 and 24.04.2022.

4. However, Mr.M.Ravi, learned counsel representing Mr.P.Rajaganapathy, learned counsel on record for the petitioner



submitted that on 17.04.2022, some problem arose when Kirithanya was not willing to go with the 3rd respondent in the evening. However, this is denied by the 3rd respondent, who submitted that Kirithanya was prevented to go with the 3rd respondent.

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5. It is seen that on the intervention of the members of the Child Welfare Committee (CWC), Kanchipuram and the Inspector of Police, Siva Kanchi Police Station, the directions of this Court were implemented, by handing over Kirithanya to the 3rd respondent. It appears that the 3rd respondent had given an undertaking to the CWC that he will produce Kirithanya on the next day. However, he had not produced Kirithanya before the CWC.

6. Mr.S.Jeyakumar, learned counsel for the 3rd respondent submitted that as directed by this Court in the order dated 08.04.2022, the 3rd respondent has now filed a petition in G.W.O.P.No.35 of 2022 on the file of the District Court, Erode against the petitioner for guardianship and custody of Kirithanya.

7. We interacted with Kirithanya in camera and found that she is fond of both parents. However, the differences between the petitioner and the 3rd respondent appear to be irreconcilable for the present, as both of them, are levelling allegations against each other.

8. When we expressed our view that the petitioner should have more access to Kirithanya, the 3rd respondent came forward with an undertaking that he would provide accommodation for the petitioner in Erode at his cost, so that the petitioner can come to Erode and spend time with Kirithanya on weekends. This, in our opinion, appears to be quite a fair arrangement. The said undertaking of the 3rd respondent is recorded and the petitioner is permitted to have access with Kirithanya at Erode on every Saturday from 10.00 a.m. till 8.00 a.m. on the following Monday and thereafter, Kirithanya should be handed over to the 3rd respondent and the petitioner can leave for Kanchipuram.

9. It is made clear that this arrangement is purely a temporary one, in the light of the fact that Kirithanya would be having summer vacation. However, while the school reopens, the petitioner should hand over Kirithanya at 6.00 p.m. on Sunday itself and thereafter, leave for Kanchipuram on the next day, i.e., Monday. However, it was agreed by the petitioner and the 3rd respondent that Kirithanya will be in the custody of the petitioner at Kanchipuram from tonight (night of 29.04.2022) to 5.00 p.m. on 01.05.2022 and thereafter, the 3rd respondent can collect Kirithanya and take her to Erode.



10. We hope and trust that both parties would strictly and fairly follow the aforesaid directions and if there is any glitch, it is open to either of them to approach the 2nd respondent, who shall ensure that the order of this Court is being implemented.

11. We direct the petitioner to enter appearance in G.W.O.P.No.35 of 2022, without formally waiting for the receipt of summons therefrom and contest the case on merits and upon the petitioner entering appearance, the District Court, Erode shall proceed with the G.W.O.P.No.35 of 2022, without in any manner, being influenced by what is stated above. It is also open to the District Court, Erode to modify the aforesaid directions issued by this Court, in the paramount interests of Kirithanya, without any further reference to this Court. It is made clear that the other legal avenues available to the parties are left open.

With the above directions, this Habeas Corpus Petition stands closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1. The District Judge
Erode
(G.W.O.P.No.35 of 2022)
2. The Superintendent of Police
Gandhiji Road
Marapalam
Erode District 638 001
3. The Inspector
All Women Police Station
Erode 638 112.



4. The Public Prosecutor
Madras High Court
Chennai 600 104.

Copy To

The Secretary,
Child Welfare Committee, Kanchipuram.

+lcc to Mr.P.Rajaganapathy, Advocate, S.R.No.30176
+lcc to Mr.S.Jeyakumar, Advocate, S.R.No.30812

H.C.P.No.539 of 2022

KJ (CO)
PM/19/05/2022