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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

Coram

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

H.C.P. No.1141 of 2021

S.Sumathi
W/o.R.Sujith Barik

...Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai,
No.132, Commissioner Office Building,
EVK Sampath Road, Periyapet,
Vepery, Chennai - 600 007.

2.State of Tamil Nadu represented by
The Inspector of Police,
J-8 Neelankarai Police Station,
No.221, SH 49, Saraswathi Nagar,
Neelankarai, Chennai - 600 115.

3.Ravindra Barik

4.R.Sujith Barik
[R4 is suo motu impleaded as per order
in H.C.P.No.1141 of 2021 dated 29.07.2021] ...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the second respondent to secure the petitioner's son Yashwanth, aged about 5½ years and to produce him before this Court, who is under the illegal custody of the third respondent and hand over to the petitioner.

For Petitioner : Mr.D.Arun Kumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor [R1 & R2]
Dr.Susant Kumar Kanungo [R3 & R4]



ORDER

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

This petition has been filed seeking a direction to the second respondent to secure the petitioner's son Yashwanth, aged about 5½ years and to produce him before this Court, who is under the illegal custody of the third respondent and hand over to the petitioner.

2. On 21.09.2021, we passed the following order:

'On 09.09.2021, we passed the following order:

'This petition has been filed seeking a direction to the second respondent to secure the petitioner's minor son viz., Yashwanth S/o.R.Sujith Barik, aged about 5½ years, who is under the illegal custody of third respondent and produce him before this Court and hand over his custody to the petitioner.

2. On 26.08.2021, we passed the following order:

'On 29.07.2021, this Court passed the following order:

"Today, Mr.P.Sankarraaj, Sub-Inspector of Police, J-8 Neelankarai Police Station, is present.

2. On instructions, learned Government Advocate [Crl.side] submits that the address of the third respondent that was given by the petitioner turned out to be wrong inasmuch as the police sent summons to the third respondent by post, the same has been returned unserved.

3. However, learned Government Advocate [Crl.side] submits that the Inspector of Police, J-8 Neelankarai Police Station, is in touch with the Odisha police.

4. That apart, we are of the view that the husband of the petitioner is a necessary party in this case and therefore, we suo motu implead R.Sujith Barik S/o.Ravindra Barik, as a party respondent.



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5. The petitioner is directed to go in person to J-8 Neelankarai Police Station and give all the details with regard to her husband and her in-laws to the Inspector of Police, J-8 Neelankarai Police Station. If required, the petitioner has to accompany the police to Odisha to locate the address of her husband and third respondent.

6. The Inspector of Police, J-8 Neelankarai Police Station, is directed to trace the whereabouts of the husband of the petitioner and produce him before this Court on the next hearing date i.e. 26.08.2021.

Post on 26.08.2021."

2. Today, C.Maheshkumar (Mobile No.99406 34500), Inspector of Police, J-8, Neelankarai Police Station, Chennai, is present.

3. On instructions, Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side) submitted that pursuant to the order passed by this Court on 29.07.2021, a police team headed by C.Maheshkumar, Inspector of Police, went to Bhuvaneshwar and with the help of local police, located the address of the third respondent Ravindra Barik; however, since in the order dated 29.07.2021, the name of the child Yashwanth was not mentioned, the local police stated that they may not be able to provide necessary assistance to the Tamil Nadu police for securing the child; therefore, the Tamil Nadu police had to return empty handed.

4. However, when the matter is taken up for hearing, Mr.Sumit Sekar Pattanaik (Mobile No.9556441733; Enrollment No.634/2014, Odisha) appeared via video conferencing and stated that he is entering appearance for Ravindra Barik and Sujith Barik, third and fourth respondents herein, respectively. He also undertook to produce the child Yashwanth, aged about 5½ years,



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son of Sujith Barik, before this Court on the next hearing date i.e., on 09.09.2021.

5. The petitioner shall also be present before this Court in person on 09.09.2021.

Post the matter on 09.09.2021.'

3. Today, Mr.C.Mahesh Kumar, Inspector of Police, J8 Neelankarai Police Station, is present.

4. The petitioner is also present with her Advocate.

5. Mr.Sumit Sekar Pattanaik, Advocate, Odhisa, appeared via video conferencing and stated that he conveyed the order of this Court to the parties, but, they have not reverted to him and that they have engaged some other counsel.

6. Mr.M.Manjunath Meled, Advocate (Enrl.No.4833/99), Mobile No.8800557275, e-mail ID : manju.meled@gmail.com, appeared via video conferencing and stated that he has entered appearance for Ravindra Barik and R.Sujith Barik (respondents 3 and 4). Learned counsel further stated that he will produce the child Yashwanth, aged about 5½ years, before this Court on the next hearing date.

7. The aforesaid submission is recorded.

Post on 21.09.2021 for production of the child Yashwanth S/o.Sujith Barik. The petitioner shall also be present.'

2. Today, Mr.K.K.Thirugnanam, Sub-Inspector of Police, J-8, Neelankarai Police Station, is present. The petitioner is also present.

3. Dr.Susant Kumar Kanungo, Advocate, Supreme Court of India, kept up the word that was given by Mr.M.Manjunath Meled, Advocate and brought Sujith



Barik and the child Yashwanth to the Court. Yashwanth was holding the hands of his paternal grand mother Savithiri.

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4. When we asked the petitioner to hug Yashwanth, initially he showed little reluctance, later, he clinged on to the petitioner in the open Court. Thus, we were able to see that his love for his mother had not waned and that he is yearning for her company. Therefore, we handed over custody of the child to the petitioner, bearing in mind the child's paramount interest.

5. We are of the opinion that it would be desirable to send the parties for mediation, so that, the matter could be settled amicably. In the mean while, Dr.Susant Kumar Kanungo, Advocate, could also file his counter affidavit in this case.

6. The parties are directed to appear before the Assistant Registrar, Tamil Nadu Mediation and Conciliation Centre attached to this Court, Ground Floor, High Court Building, on 28.09.2021, along with their respective counsel. On their appearance, the Assistant Registrar shall arrange for mediation (physical meeting and not video conferencing) in the High Court mediation room itself by availing the service of a competent mediator, preferably, a lady mediator, who knows Hindi.

7. We place on record our appreciation to Dr.Susant Kumar Kanungo, Advocate, for making this reunion of the child with its mother possible.

Post the matter before this Court after conclusion of mediation proceedings along with the mediation report.'

3. Today, Mr.C.Mahesh Kumar, Inspector of Police, J8 Neelankarai Police Station, is present.

4. The Assistant Registrar, Tamil Nadu Mediation and Conciliation Centre, has forwarded the mediation report dated 20.12.2021, wherein, it is stated that "Mediation completed. No agreement was reached". However, the custody of the detenu child is with the petitioner.



5. In the aforestated circumstances, nothing survives in this petition. Accordingly, this Habeas Corpus Petition is closed with liberty to the respondents 3 and 4 to work out their remedies in the manner known to law.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner of Police,
Greater Chennai,
No.132, Commissioner Office Building,
EVK Sampath Road, Periyapet,
Vepery, Chennai - 600 007.
2. The Inspector of Police,
J-8 Neelankarai Police Station,
No.221, SH 49, Saraswathi Nagar,
Neelankarai, Chennai - 600 115.
3. The Public Prosecutor,
High Court, Madras.

H.C.P. No.1141 of 2021

SKM(CO)
SP(25/03/2022)