



H.C.P.No.1353 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11..11..2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

Habeas Corpus Petition No.1353 of 2021

Shanthi @ Piyari

..... Petitioner

-Versus-

- 1.The State Rep. by
Inspector of Police,
All Women Police Station,
Poonamallee, Chennai 600056.
- 2.The Chairperson,
Child Welfare Committee,
Tiruvallur District.
- 3.The Superintendent,
Government Children Home for Girls,
Kellys', Chennai 600010.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the 1st respondent to produce the body of the petitioner's minor daughter Mubina, aged about 16 years, D/o Shanthi @ Piyari, from the custody of the 3rd respondent before this Court and to handover the



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custody of the minor detainee to the petitioner (mother).

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For Petitioner : Ms.R.Anuradha

*For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor*

ORDER

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

This Habeas Corpus Petition has been filed seeking a direction to the 1st respondent to produce the body of the petitioner's minor daughter Mubina, aged about 16 years, D/o Shanthi @ Piyari, from the custody of the 3rd respondent before this Court and to handover the custody of the minor detainee to the petitioner (mother).

2. Today, Ms.Mary Auxilia, Chairperson, Child Welfare Committee, Tiruvallur District; Mrs.G.Kasthuri, Deputy Director, Department of Social Defence, Kellys' Chennai; and Ms.C.Thanammal, Inspector of Police, All Women Police Station, Poonamallee; Shanthi @ Piyari (petitioner) and minor Mubina



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(detenue) are present.

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3. In the order dated 07.09.2021, this court has set out the entire facts in detail and hence, it requires no further reiteration. Suffice it to state that in para 17 of the order dated 07.09.2021, this court had directed that Mubina cannot be taken out of the Government Children's Home for Girls, Kellys', Chennai. On 11.10.2021, when the matter was taken up for hearing, it was brought to our notice that the custody of Mubina was handed over to the petitioner and, therefore, we passed the following order:-

“Pursuant to our order dated 10.10.2022, the following persons were present before us:-

1.Ms.C.Thanammal, Inspector of Police, W-30, All Women Police Station, Poonamallee;

2.Mrs.Kasthuri, Deputy Director, Department of Social Defence, Kelly's Home, Chennai.

3.Ms.J.Mary Auxilia, Chairperson, Child Welfare Committee, Tiruvallur District.

4.Shanthi @ Piyari (Petitioner herein)
and

5.Selvi.Mubina (Detenue herein)

2. By order dated 07.09.2021, we had made it clear that Mubina cannot be taken out of the Government Children Home



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for Girls, Kellys, Chennai. When we enquired with Ms.Kasthuri and Ms.J.Marry Auxilia, they stated that Mubina wanted to go to her parents and so, a request was forwarded to the Child Welfare Committee, Tiruvallur, pursuant to which, the Child Welfare Committee, passed an order on 01.07.2022 removing Mubina from the custody of the Government Children Home for Girls, Kelly's, Chennai, and handing over the custody to the petitioner herein.

3. Mrs.R.Anuradha, learned counsel for the petitioner stated that for the last over 6 months she has not been attending to the court work as her husband was seriously ill and so, she was taking care of him. Therefore, she did not know the fact that the custody of Mubina was given by the Child Welfare Committee to the petitioner. Ms.Kasthuri and Ms.J.Marry Auxilia are, therefore, directed to file their affidavits along with copies of supporting documents explaining the circumstances under which the custody of Mubina was given to the petitioner. Until further orders of this court, the custody of Mubina shall continue with the petitioner. Post this matter on 10.11.2022. ”

4. In response to the above, Mrs.G.Kasthuri, Deputy Director, Department of Social Defence, Kellys' Chennai, and Ms.Mary Auxilia, Chairperson, Child Welfare committee, Thiruvallur District, have filed individual affidavits dated 11.10.2022 wherein they have sought unconditional apology for having handed



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over the custody of Mubina to the petitioner in violation of the order dated 07.09.2021. However, in Paragraphs 9 to 13 of the affidavit Mrs.G.Kasthuri, Deputy Director, Department of Social Defence, Kellys', Chennai, has explained as under:-

“9. I respectfully submit that the CWC had issued order to the superintendent, GCH for Girls stating that the detainee to be kept in the Children's Home for a period of one year as per Section 37(1)(c) of the Juvenile Justice [Care and Protection of Children] Act, 2015. Since the said period was completed on 28.03.2022 [the detainee joining order 29.03.2021] and hence, I called for the pre-release report from the Probation Officer, Tiruvallur, on 03.03.2022 and in turn, he had sent his Probation Report in Soft Copy stating that the detainee shall complete her IX Standard in GCH for Kellys and may transfer the detainee to AngumanHome, T.Nagar, for further studies and also directed me to approach the Child Welfare Committee, Tiruvallur, to obtain the above said order.

10. I submit that based on the order of the Probation Officer, Tiruvallur, on 02.05.2022, I had sent a letter to Child Welfare Committee, Tiruvallur, stating that the detainee examinations was getting over on 12.05.2022, hence issue appropriate final order in the detainee case to proceed further.

11. I further submit that mean while on 18.06.2022, the detainee has given a requisition letter to me stating that she want to go with her mother and further stated that she wished to continue her X standard from her residence. On the same day, I forwarded the said detainee's requisition letter to the



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Child Welfare Committee for further action.

12. I respectfully submit that on 01.07.2022, I have received a Home Release Order from the Child Welfare Committee, Tiruvallur, and as per the order of the CWC, Tiruvallur, the detainee was handed over to her mother/petitioner herein namely, Shanthi @ Pyari on the same day.

13. I respectfully submit that due to the completion of tenure of one year of the detainee's stay at the Home and her request letter to stay with her mother and continue her studies with her parent, inadvertently, I forwarded the letter to the Child Welfare Committee, Tiruvallur, for further measures. Only after receiving the Home Release Order from the CWC, Tiruvallur, I had sent the detainee with her mother safely, on 01.07.2022. Further I did not deliberately dispense with the orders passed by this Hon'ble Court dated 07.09.2021.”

5. In the affidavit filed by Ms.J.Mary Auxilia, Chairperson Child Welfare Committee (CWC), Tiruvallur District, she has stated that pursuant to the communication dated 18.06.2022 received from the Superintendent, Government Children Home for Girls, Kellys', Chennai, CWC acted thereupon, conducted enquiry and handed over the custody of Mubina to her mother.

6. We carefully considered the explanations offered by Mrs.G.Kasthuri,



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Deputy Director, Department of Social Defence, Kellys' Chennai, and Ms.Mary Auxilia, Chairperson, Child Welfare Committee, Thiruvallur District. Though they have prima facie violated the orders of this court by handing over the custody of Mubina to the petitioner, we find that they have acted in terms of clause (c) of sub-section (1) of Section 37 of the Juvenile Justice (Care and Protection of Children) Act, 2015 on the premise that Mubina cannot be kept in the home beyond one year without further orders of the CWC.

7. Therefore, accepting the explanations of the Chairperson, CWC, Tiruvallur District and Deputy Director, Department of Social Defence, Kellys', Chennai, this Habeas Corpus Petition is closed and further action is dropped. However, in future, the authorities should be more circumspect and carefully while passing such custody orders and no orders should be passed in violation of the orders of this court. We also find that Mubina is now safe in the custody of the petitioner (mother) and, therefore, we do not want to restore the *status quo ante*.

[P.N.P., J]

[TKR,J.]



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To

- 1.The Inspector of Police, All Women Police Station, Poonamallee, Chennai-56.
- 2.The Chairperson, Child Welfare Committee, Tiruvallur District.
- 3.The Superintendent, Government Children Home for Girls, Kellys', Chennai 600010.
- 4.The Deputy Director, Department of Social Defence, Kellys, Chennai 600010.
- 5.The Public Prosecutor, High Court, Madras.



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P.N.PRAKASH.J.
AND
RMT.TEEKAA RAMAN.J.

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