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H.C.P.No.1807 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16..12..2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**

and

The Honourable Mr. Justice **N.ANAND VENKATESH**

Habeas Corpus Petition No.1807 of 2022

S.Vignesh

..... Petitioner

-Versus-

1.The Commissioner of Police,
Tambaram Commissionerate,
Chennai.

2.The Inspector of Police,
Sankar Nagar Police Station.

3.Tmt.Amutha

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the respondent police to produce the body of the minor detenu viz.,Aarya, aged about 5 years, Son of Vignesh, before this court and hand over the custody of the minor detenu to the petitioner (father).



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For Petitioner : Mr.S.N.Subramani

*For Respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor
Mr.R.Karthik for R3*

ORDER

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

This Habeas Corpus Petition has been filed seeking a direction to the respondent police to produce the body of the minor detenu viz., Aarya, aged about 5 years, Son of Vignesh, before this court and hand over the custody of the minor detenu to the petitioner (father).

2. On 11.11.2022, we passed the following order:-

“On 10.10.2022, we passed the following order:-

“It is the case of the petitioner that he fell in love with one Divya, got married to her sometime in February'2016 against the wishes of her parents and through the wedlock, he has a son viz., Aarya [DOB : 19.07.2017]. He was living with his family within the limits of Sankar Nagar Police Station. Unfortunately, the petitioner's wife committed suicide in her matrimonial home on 12.12.2020, in connection with which, a case in Sankar Nagar P.S. Crime No.1066/2020 was registered u/s.174 Cr.P.C. It is the grievance that the third



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respondent took custody of Aarya and is not even showing the child to the petitioner. On these grounds, the present petition has been filed.

2. Today, Mr.R.Ramachandran, Sub-Inspector of Police, T-4 Shankar Nagar Police Station, [Mobile No.:94981 12077] is present.

3. On receipt of notice, Mr.R.Karthik, Advocate, entered appearance and has filed a detailed counter statement making counter allegations against the petitioner and stating that Aarya is comfortable with the third respondent, studying I standard in Green Tech Matric Higher Secondary School, Cuddalore and that he should not be forcibly removed from the custody of the third respondent.

4. The petitioner was also present before this Court and he was permitted to spend time with the child.

5. Taking into consideration the facts and circumstances, we are of the view that the petitioner be given visitation rights initially to visit Aarya and spend time with him, which the third respondent readily agreed. Hence, we permit the petitioner to collect Aarya from the custody of the third respondent at 09.00 a.m. on every Saturday and Sunday and drop Aarya at 06.00 p.m. at the house of the third respondent on the same evening. This is purely a temporary measure. Call on 07.11.2022.”

2. Today, Ms.S.Mageshwari, Sub-Inspector of Police, S-6, Sankar Nagar Police Station; S.Vignesh (petitioner); Tmt.Amutha (3rd respondent) and Aarya, (son of the petitioner), aged 5 years, are present.

3. We find that the child is very much attached to the father (petitioner herein). We are informed that the



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petitioner is taking the child, as permitted by this court, every week end from the custody of the 3rd respondent and drop him back. In the earlier order, we have permitted the petitioner to take the child at 09.00 a.m. in the morning on every Saturday and Sunday and drop the child back on the same day in the evening. However, now, we modify the above said order as follows:-

(i) The petitioner will take the custody of the child from the 3rd respondent at 09.00 a.m. on every Saturday and handover the custody of the child to the 3rd respondent at 06.00 p.m. on the ensuing Sunday at the residence of the 3rd respondent.

Call this matter on 16.12.2022.”

3. Today, when the matter was taken up for hearing, Ms.S.Maheswari, Spl. Sub-Inspector of Police, S-6, Shankar Nagar Police Station, was present.

4. S.Vignesh (petitioner) was present.

5. The learned counsel counsel for the petitioner and learned counsel for the 3rd respondent submitted that the directions issued by this Court in the order dated 11.11.2022 is being adhered to, in that, the petitioner is taking the custody of the minor child (detenu) at 09.00 a.m. on every Saturday and returning the custody of the minor child to the 3rd respondent at 06.00 p.m. on the ensuing Sunday.

6. The learned Additional Public Prosecutor, submitted that the investigation in



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Sankar Nagar Police Station Crime No.1066 of 2022 is pending and that the report of the Revenue Divisional Officer is awaited. Since the child is very much attached to the petitioner (father), we modify the earlier order dated 11.11.2022 as under:-

(i) The petitioner will take the custody of the minor child from the 3rd respondent at 06.00 p.m. on every Friday and handover the custody of the minor child to the 3rd respondent at 06.00 p.m. on the immediately ensuing Sunday at the residence of the 3rd respondent.

7. This interim arrangement shall continue and it is open to the parties to approach the appropriate court to workout their remedies in accordance with law. It is open to the appropriate court to pass any order, including interim order for the custody of the minor child albeit the interim arrangements made in this order.

In the result, this Habeas Corpus Petition is disposed of accordingly with the above directions.

(P.N.P., J.) (N.A.V.,J.)
16..12..2022

Index: Yes/No
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To

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- 1.The Commissioner of Police, Tambaram Commissionerate, Chennai.
- 2.The Inspector of Police, Sankar Nagar Police Station, Chennai.
- 3.The Public Prosecutor, High Court, Madras.



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P.N.PRAKASH.J.,
AND
N.ANAND VENKATESH.J.,

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