



WEB COPY



H.C.P.No.2359 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **SUNDER MOHAN**

H.C.P.No.2359 of 2022

Karthika

.. Petitioner

Vs

1.The Deputy Commissioner of Police,
Coimbatore (South),
Coimbatore.

2.Sivakumar

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the first respondent to produce the petitioner's minor male child viz. Mrudhul Sivakumar, aged 8 years, S/o.Sivakumar, from the custody of the second respondent and hand over to the petitioner.



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For Petitioner : Mr.Praveen R
For R1 : Mr.R.Muniyapparaj
Addl. Public Prosecutor
For R2 : Mr.L.Mouli

ORDER

(Made by *P.N.PRAKASH, J.*)

This habeas corpus petition has been filed by the petitioner seeking a direction to the first respondent to produce her minor male child *viz.* Mrudhul Sivakumar, aged 8 years, S/o.Sivakumar, from the custody of Sivakumar, second respondent herein and hand over to her.

2. It is the case of the petitioner that she got married to Sivakumar/R2, who was already employed in the U.S., on 18.11.2010 and after marriage, she joined him there; she conceived and came to India for delivery; a son *viz.* Mrudhul Sivakumar was born to her in Coimbatore on 27.11.2013; thereafter, she joined her husband in the U.S.; in May 2022, all the three came to Coimbatore to visit their relatives; since she had to return to the U.S. urgently, she left India on 08.08.2022 on the assurance given by



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Sivakumar/R2 that the he would also join her soon there; however, he did not return to the U.S. with the child and instead, he has put the child in the local school in Coimbatore, which shows that he has no intention to return to the U.S.; therefore, she initiated proceedings before the Collin Country District Court for temporary restraining order against Sivakumar/R2 on 12.08.2022 and notice has also been served on him; further, he wilfully chose to stay away and did not participate in the said proceedings and as a counter blast, he initiated proceedings for guardianship as well for divorce before the Family Court, Coimbatore; therefore, she has now come to Coimbatore and entered appearance in those litigations.

3. Alleging that her son is in the illegal custody of Sivakumar/R2, the petitioner has filed the present habeas corpus petition.

4. Today, R.Krishnaveni (Mobile No.96775 42748), Sub-Inspector of Police, All Women Police Station (East), Coimbatore District, is present.

5. On instructions, the learned Additional Public Prosecutor



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submitted that the petitioner has given a representation dated 20.09.2022, based on which, a petition enquiry is being conducted.

6. Mr.L.Mouli (Enrollment No.993 of 2003; Mobile No.98411 84301), learned counsel took notice for Sivakumar/R2 and submitted that when the matters are pending before the Family Court, Coimbatore, the parties can workout their remedies before the said Court.

7. However, the learned counsel for the petitioner prayed for some visitation rights for the petitioner temporarily, for which, Mr.L.Mouli, learned counsel for Sivakumar/R2 stated that the petitioner can visit the child at the house of Sivakumar/R2 on every weekends at 10.00 a.m.

8. Accordingly, the petitioner shall visit her son Mrudhul Sivakumar, aged about 8 years, at the residence of Sivakumar/R2 on every Saturday and Sunday at 10.00 a.m. However, we make it clear that this is only purely an interim measure and it is always open to the appropriate Court to pass orders both interim and final in the custody proceedings, as it deems



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fit in the paramount interest of the child. The visitation rights given by us above is by mutual consent and it will have no bearing on the orders passed in the custody proceedings by the Family Court.

With the above observations and directions, this habeas corpus petition stands closed.

(P.N.P., J.) (S.M., J.)
21.11.2022

Index: Yes/No
nsd

To

- 1.The Judge,
Family Court, Coimbatore.
- 2.The Deputy Commissioner of Police,
Coimbatore (South),
Coimbatore.
- 3.The Inspector of Police,
All Women Police Station (East),
Coimbatore District.
- 4 .The Public Prosecutor,
High Court, Madras.



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