



HCP No.2607 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.12.2022

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P.No.2607 of 2022

Shruthi Thilak
W/o.Dr.Prabhu Thilak

.. Petitioner

Vs.

- 1.The Commissioner of Police,
132, EVK Sampath Road,
Veppery, Chennai – 600 007.
- 2.The Inspector of Police,
R-5 Virugambakkam Police Station,
Chennai – 600 092.
- 3.The Inspector of Police,
All Women Police Station,
Ammamet,
Salem – 636 003.
- 4.The Inspector of Police,
V-5 Police Station,
Thirumangalam
Chennai – 600 101.
- 5.Dr.Prabhu Thilak
- 6.Dr.Indira Priyadharshini



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7.Dr.S.Jayaraman

Senior Consultant – Emergency Medical Service,
SIMS Hospitals – Vadapalani
No.1, Jawaharlal Nehru Salai, (100 Feet Road)
Vadapalani,
Chennai – 600 026.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the 1st and 2nd respondents to produce the petitioner's children namely Athulya P. Thilak aged 14 years and Mahorjjith P.Thilak aged 7 years the detinue children from the illegal custody of the 5th respondent in connivance with other respondents 4, 6 and 7 before this Court and to restore their custody to the petitioner.

For Petitioner : Mr.G.Krishnamurthy
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor [R1 to R4]
Mr.C.Emilias [R5]
Mr.L.Infant Dinesh [R6]
Mr.A.Thayaparan [R7]

ORDER

[Made by **P.N.PRAKASH, J**]

This petition has been filed seeking a direction to the respondents 1 and 2 to produce the petitioner's children, namely, Athulya P. Thilak, aged 14 years and Mahorjjith P.Thilak, aged 7 years, the detenues from the illegal custody of the fifth



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respondent in connivance with other respondents 4, 6 and 7 before this Court and to restore their custody to the petitioner.

2. The petitioner is the mother of Athulya P. Thilak, aged 14 years and Mahorjjith P.Thilak, aged 7 years. She has approached this Court seeking for the custody on the ground that they have been illegally detained by the respondents 5 to 7.

3. When the matter came up for hearing on 19.12.2022, we passed the following order:

"Today, Ms.Kantha Pal, Sub Inspector of Police, V-5, Thirumangalam Police Station [Mobile: 94981 04131] and Ms.P.Pappathi, Special Sub-Inspector of Police, All Women Police Station, Ammapet [Mobile: 94981 66279] are present before this Court.

2.Mr.R.Muniyapparaj, learned Additional Public Prosecutor, takes notice for the respondents 1 to 4.

3.Private Notice to the respondents 5 to 7, returnable by 21.12.2022.

4.The 4th respondent is directed to produce the children before this Court on 21.12.2022.

Post this case on 21.12.2022."



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4. When the matter came up for hearing on 21.12.2022, we passed the

following order:

"Today, Mr.M.Uthiran, Sub-Inspector of Police, V-5 Thirumangalam Police Station [Mobile No.94981 29308], is present."

2. The petitioner, Prabhu Thilak [fifth respondent herein] and the two children viz., Athulya and Mahorjjith, were present.

3. After talking to the parties, we directed the fifth respondent to give interim custody of Mahorjjith till tomorrow.

4. The petitioner took custody of Mahorjjith from the Court and undertook to produce him tomorrow at 10.30 a.m. Athulya will be in the custody of the fifth respondent.

Call on 22.12.2022."

5. Today, when the matter was taken up for hearing, the petitioner produced Mahorjjith P.Thilak as directed by us. Taking into consideration the overall facts and circumstances, we are convinced that the custody of the children with the father cannot be said to be *per se* illegal for issuance of a writ of habeas corpus. Since there are serious disputed facts, the same cannot be gone into in the Habeas Corpus Petition under Article 226 of the Constitution of India.



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6. The learned counsel for the petitioner submitted that the petitioner may be permitted to have access to the children through mobile phone, for which, the learned counsel for the 5th respondent stated that the 5th respondent would have no objection if the children speak to the petitioner *via* mobile phone.

Accordingly, this Habeas Corpus Petition is closed with liberty to the parties to workout their remedy in the manner known to law before the appropriate forum. Until then, the children will be in the custody of the 5th respondent.

[P.N.P., J] [N.A.V., J]
22.12.2022

Index: Yes/No
gm/ssr

To

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4.The Inspector of Police,
V-5 Police Station,
Thirumangalam
Chennai – 600 101.

5.The Public Prosecutor,
High Court, Madras.

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