



H.C.P(MD)No.1730 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.12.2022

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**
and
THE HONOURABLE MR.JUSTICE **SUNDER MOHAN**

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Thineshkumar

.. Petitioner/Father of the
detenu

Vs.

1.The Superintendent of Police,
Sivagangai District,
Sivagangai.

2.The Inspector of Police,
Sivagangai City Police Station,
Sivagangai District.

3.The Inspector of Police,
Trichy Airport Police Station,
Trichy District.

4.K.Narayanan

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Habeas Corpus, directing the
Respondents 1 to 3 to produce the body or person of the detenu namely,
Karshith Kumar, son of Thineshkumar, aged about 5 years, before this Court



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from the illegal custody of the 4th respondent and set him at liberty and hand over his custody to the petitioner.

For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor
for R1 to R3

Mr.S.Ramesh
for Mr.G.Karuppaiah for R4

ORDER

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

This petition has been filed by the father of the detenu, to produce his minor son, viz. Harshith Kumar, aged about 5 years, who is in illegal custody of the fourth respondent herein.

2. This petition has been filed stating that the petitioner married the daughter of the fourth respondent on 10.02.2016 and out of the wedlock, a son by name Harshith Kumar was born to them. They were living in Abu Dhabi. On 07.06.2022, due to some misunderstanding between the petitioner and his wife,



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she committed suicide by hanging. The police at Abu Dhabi had conducted investigation and found that *prima facie* there were no injuries of a criminal nature and allowed the petitioner to travel to India along with the dead body of his wife. The petitioner came with his son to Trichy, where he was attacked by the fourth respondent and the other relatives and the son had snatched away from the possession from him. Thereafter, he had to leave to Dubai-Abu Dhabi without taking his son. On 07.09.2022, the Judicial Department at Abu Dhabi prosecution had issued Administrative Maintenance Order stating that the suicide was proved by the Centre for Criminal and Electronic Sciences report- Forensic Medicine Administration. He thereafter made attempts to get the custody of the child through friends and relatives. However, the fourth respondent refuses to hand over the custody and also did not disclose the whereabouts of the child. This has led the petitioner to file this Habeas Corpus Petition.

3. When the matter came up on an earlier occasion, this Court directed the fourth respondent to allow the petitioner visitation rights as per the following schedule:



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Date	Time
16.11.2022	11 a.m. to 2.00 p.m
19.11.2022	11 a.m. to 2.00 p.m
21.11.2022	11 a.m. to 2.00 p.m
24.11.2022	11 a.m. to 2.00 p.m
27.11.2022	11 a.m. to 2.00 p.m

4. Thereafter, it appears that the fourth respondent did not comply with the said direction and filed a modification petition. This Court, once again passed an order recording the fact that the fourth respondent did not comply with the earlier directions and directed the fourth respondent to hand over the custody of the minor child to the petitioner for a period of one week. This Court further directed that depending on the response of the child and after taking into consideration the interest and welfare of the child, it would pass further orders.

5. Today, the child was brought by the petitioner and the fourth respondent along with his wife, were present in Court. We interacted with the wife of the fourth respondent, the petitioner and the child. On interaction, we find that the child is comfortable in the company of the father. On an earlier occasion, this Court had recorded that when the father wanted to see the child, the child was not inclined to go to the father as there were some inhibition on



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the part of the child. However, we found today that the child is comfortable in the company of the father. Further, we see that the fourth respondent is aged about 65 years and considering the fact that the father being the natural guardian and also the fact that there is a specific finding that his wife committed suicide due to misunderstanding, there is no reason why we should not deny the custody to the petitioner in exercise of our *parens patriae* jurisdiction and considering the welfare of the minor child who can be better taking care of the minor child. We are inclined to hold that the petitioner is entitled to the custody of the minor child and hence, this Habeas Corpus Petition is allowed.

6. Considering the facts and circumstances and also taken note of the financial position of the petitioner, who is well placed in Dubai-Abu Dhabi and working as Sales Manager in a private company at Mussafah, the best interest of the child would be to give the custody to the father with whom he lived for more than 5 years except for 5 months with the grandparents.

7. If the fourth respondent and his wife wants to see the grandson, it is always open for them to visit him and we hope that the petitioner herein will



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not prevent them in exercising their visitation right. If there is any violation, it is always open to the fourth respondent to approach the appropriate Court for seeking visitation right. The said Court shall pass appropriate orders on the facts and circumstances of the case in accordance with law.

**[G.J., J] & [S.M., J]
06.12.2022**

Index : Yes / No
Internet : Yes / No
PJJ

To

1.The Superintendent of Police,
Sivagangai District,
Sivagangai.

2.The Inspector of Police,
Sivagangai City Police Station,
Sivagangai District.

3.The Inspector of Police,
Trichy Airport Police Station,
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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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