



WEB COPY



HCP(MD)No.1760 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1760 of 2022

Aprose

... Petitioner /Mother of the Detenue

/Vs./

1.The Superintendent of Police,
O/o. The Superintendent of Police,
Viruthunagar District.

2.The Inspector of Police,
Town Police Station,
Sivakasi,
Viruthunagar District.

3.Yusuf

4.Shakila Banu

5.Nijam Khan

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the body or person of the petitioner's son namely Mohamed Vaajith,



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S/o.Syed Ali Badhuza aged about 7 years before this Court and hand over his custody to the petitioner.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor (R1&R2)

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

This Habeas Corpus Petition was filed on the ground that the son of the petitioner was illegally taken away by the third and fourth respondents and hence, the petitioner has sought for a direction to the respondent police to produce the body of the minor boy, aged about seven years.

2. When the matter came up for hearing on 27.10.2022, this Court passed the following order:

“The mother of the detenu has filed this Habeas Corpus Petition seeking for the custody of her son namely, Mohamed Vaajith, aged about 7 years.



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2. *The learned counsel for the petitioner submitted that the petitioner was married to one Syed Ali Badhuza, in the year 2014 and the marriage was dissolved in the year 2022, as per the Muslim Law and customs. The grievance of the petitioner is that the respondents 3 and 4, who are the parents of the petitioner have forcibly taken away the child from her. The learned counsel further stated that after the complaint was given to the respondent police, the child was sent to the home and the petitioner is not even allowed to see the child.*

3. *The Additional Public Prosecutor, on instructions, submitted that pursuant to the complaint given by the petitioner, an enquiry was conducted and it is seen that the respondents 3 and 4 have the custody of the child and they intend to hand over the child to the first husband namely, Syed Ali Badhuza.*

4. *In the considered view of this Court, the respondents 3 and 4 do not have any right to take away the child from the petitioner, since the petitioner is the natural guardian of the child. A 7 year old boy cannot be allowed to stay in a home and it will have a bearing on the welfare of the child.*

5. *In view of the same, there shall be a direction to the second respondent police to produce the child before this Court, during the next date of hearing. The petitioner shall also be present before this Court on that day.*



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6. Post the matter on 31.10.2022.”

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3. When the matter was taken up for hearing today, we independently spoke with the petitioner and the detenu. The petitioner stated that her son was in her custody till 14.10.2022 and thereafter, he was illegally taken away by the third and fourth respondents, who are the parents of the petitioner. Thereafter, the detenu was handed over to Syed Ali Badhuza, who was the first husband of the petitioner and whose marriage stood dissolved through Kula issued by the petitioner. She stated that the detenu must be handed over to her.

4. We independently spoke with the detenu, who is a young boy, aged about seven years. We find that many of his answers were contradicting each other and we got an impression that he has been tutored. Hence, we appointed Mr.J.Alaguraam Jothi, Advocate, to act as a Mediator and to talk with all the parties concerned and to give his opinion before this Court. The matter was passed over and was directed to be taken up in the afternoon session.



5. When the matter was taken up at 02.15 p.m., Mr.J.Alaguraam Jothi, learned Mediator, submitted that the minor boy has been tutored and on carefully considering the statements given by the minor boy, the petitioner and also Syed Ali Badhuza and looking at the conduct of the child, the learned Mediator submitted that the child as of now is more comfortable with his biological father, namely Syed Ali Badhuza.

6. The learned counsel appearing for the petitioner submitted that after the child was illegally taken away by the parents of the petitioner, a Guardians and Wards Original Petition (GWOP) came to be filed by Syed Ali Badhuza seeking for guardianship of the child in G.W.O.P.No.262 of 2022 before the Additional District Judge, Tenkasi. The learned counsel appearing for the petitioner further submitted that this GWOP came to be filed only on 26.10.2022, after the child was abducted on 14.10.2022. Therefore, the GWOP cannot be put against the petitioner.

7. Per contra, the learned counsel appearing for Syed Ali Badhuza submitted that the custody of the child cannot be stated to be an illegal custody, since the biological father is now in the custody of the child. The



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learned counsel further submitted that the child is more comfortable with the father than the mother.

8. In the considered view of this Court, considering the limited scope of the Habeas Corpus Petition, we have to only see if the detenue is in illegal custody. Obviously, the custody of the child cannot be held to be illegal, since the biological father, namely, Syed Ali Badhuza is now in the custody of the child. On carefully considering the statements made by the learned Mediator, we find that the child seems to be more comfortable with the biological father and the child did not have any natural inclination towards the mother during the process of mediation.

9. It is true that the petitioner cannot be deprived of her custody of the child. However, we cannot get into that issue in the present Habeas Corpus Petition. There is already a GWOP filed before the concerned Court and it will be fit and proper for the petitioner to approach the concerned Court and seek for visitation rights and also seek for custody of the minor child. This right has to be worked out by the petitioner only before the concerned Court. If any such application is filed, the concerned Court shall



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consider the application as expeditiously as possible, in the manner known to law. Except this clarity, no further orders can be passed in this Habeas Corpus Petition. This Habeas Corpus Petition is disposed of accordingly.

(J.N.B.,J.) (N.A.V.,J.)
31.10.2022

Index : Yes/No
Internet : Yes
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To:

- 1.The Superintendent of Police,
O/o. The Superintendent of Police,
Viruthunagar District.
- 2.The Inspector of Police,
Town Police Station,
Sivakasi,
Viruthunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

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Order made in
H.C.P.(MD)No.1760 of 2022

Dated
31.10.2022