



HCP(MD)No.1903 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.11.2022

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.1903 of 2022

Ragavi

.. Petitioner / Mother of the
Detenu

Vs.

1.The Superintendent of Police,
Ramanthapuram District.

2.The Deputy Superintendent of Police,
Keelakarai,
Ramanathapuram District.

3.The Inspector of Police,
Keelakarai Police Station,
Ramanathapuram District.

4.Karthikeyan

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the third respondent to produce the petitioner's minor son namely Sharayu, S/o.Karthikeyan, aged about 5 years or his body before this Court by securing him from the 4th respondent and hand over his custody to the petitioner.



HCP(MD)No.1903 of 2022

For Petitioner :Mr.S.Ashok Kumar
For R1 to R3 :Mr.A.Thiruvadikumar,
Additional Public Prosecutor
For R4 : Mr.J.Sankar Pandian

ORDER

(Order of the Court was made by **N. ANAND VENKATESH,J.**)

This petition was filed by the mother of the detenu on the ground that the fourth respondent, who is the father of the detenu, all of a sudden took away the child on 21.10.2022 from the petitioner, had sought for a direction to produce the child before this Court.

2.When the matter came up for hearing on 25.11.2022, this Court passed the following order:

“The order passed by the Principal District and Sessions Judge, Ramanathapuram in Crl.M.P.No.3978 of 2022, dated 23.11.2022 was produced before us. The relevant portions in the order are extracted hereunder:

“6. Heard both side and perused the records.

Both the petitioners and the defacto complainant and her daughter Ragavi present along with child. On perusal it reveals that both the petitioner and the defacto complainant's daughter got married on 19.05.2016 and they were blessed with a male child on



HCP(MD)No.1903 of 2022

14.02.2017. Subsequently due to some misunderstanding between both the parties, the said Ragavi preferred a petition for dissolution of the marriage on the file of learned Sub Court, Ramanathapuram.

7. Since the 1st petitioner herein has no objection for granting divorce to the said Ragavi the said OP was allowed on 27.08.2021 thereby dissolving the marriage solemnized between the parties. Further it would appear that after the marriage was dissolved, the said Ragavi remarried and now she is in the family way and the child born through the 1st marriage as under her care and custody till the 1st petitioner has allegedly taken away the child from her custody. Hence her mother preferred complaint against the petitioners for the offences under section 294(b), 447, 363 and 506(i) of IPC on the file of the Keelakarai P.S.

8. Today this Court mediated with the 1st petitioner and the daughter of the defacto complainant to sought out the issue amicably. After along discussion held with the concerned parties, the 1st petitioner agreed to hand over the child to the said Ragavi and she has also agreed that she will produce the child before the Hon'ble Madurai Bench of Madras High Court in the HCP (MD) No.1903/2022 filed by her and she is ready to hand over the child to the 1st petitioner on certain conditions. Accordingly the child was handed over to



HCP(MD)No.1903 of 2022

the said Ragavi.”

2. It is clear from the above that the petitioner herein agreed to handover the child to the fourth respondent, today when this matter is taken up. However, the petitioner did not abide by the undertaking given before the Court below. The learned counsel appearing on behalf of the petitioner also submitted that he has no instructions from the petitioner.

3. There shall be a direction to the third respondent to produce the detenu before this Court along with the petitioner on 28.11.2022.

*4. Post this case on **28.11.2022.**”*

3.Pursuant to the above order, the detenu was produced before this Court by the petitioner.

4.We heard the learned counsel for the petitioner, learned Additional Public Prosecutor appearing on behalf of the respondents 1 to 3 and the learned counsel appearing for the fourth respondent.

5.In the considered view of this Court, just because the petitioner has contracted a second marriage after the earlier marriage with the fourth



HCP(MD)No.1903 of 2022

respondent was dissolved in accordance with law, that will not deprive the petitioner the custody of the child. That apart, the child was in the custody of the petitioner till it was allegedly taken away by force on 21.10.2022. The condition imposed by the Court below while granting anticipatory bail to the fourth respondent was more an interim arrangement, since the Court below took into consideration the fact that the HCP was pending before this Court.

6.If the fourth respondent is seeking guardianship /custody of the child, he has to necessarily work out his remedy in the manner known to law before the appropriate forum. However, in order to strike a balance for the present, we are inclined to grant visitation rights to the fourth respondent, till he goes before the concerned Court and works out his remedy.

7.This petition is disposed of by permitting the fourth respondent to visit the child once in fifteen days after informing the petitioner well in advance. The petitioner shall permit the fourth respondent to spend half a day with the child. This Court expects the petitioner to strictly comply with the direction. This arrangement will continue till the fourth respondent



HCP(MD)No.1903 of 2022

approaches the concerned Court and work out his remedy in accordance with law.

(M.S.R.,J.) (N.A.V.,J.)
28.11.2022

Index: Yes/No

Internet: Yes/No

Ns

To

1. The Superintendent of Police,
Ramanthapuram District.
2. The Deputy Superintendent of Police,
Keelakarai,
Ramanathapuram District.
3. The Inspector of Police,
Keelakarai Police Station,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

M.S.RAMESH,J.



WEB COPY



HCP(MD)No.1903 of 2022

and
N. ANAND VENKATESH,J.
Ns

H.C.P.(MD)No.1903 of 2022

28.11.2022