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HCP No.370 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

H.C.P.No.370 of 2023

L.Magesh

... Petitioner

-VS-

1.The State rep. by
The Commissioner of Police,
Tambaram City,
Chengalpattu District.

2.Inspector of Police,
S-15 Selaiyur Police Station,
Chennai – 600 059.

3.Jebamalai

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus directing the respondents 1 and 2 to secure the petitioner's minor son namely Anto Avinash aged about 2 years from the illegal custody of the 3rd respondent and produce him before this Court and hand over to the petitioner.

For Petitioner	..	Mr.E.Sathyaraj
For R1 & R2	..	Mr.E.Raj Thilak
		Additional Public Prosecutor



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ORDER

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The petitioner/husband of one Jeniffer filed this petition seeking custody of his minor son Anto Avinash aged about 2 years who is in the custody of the third respondent/mother-in-law of the petitioner. The petitioner earlier lodged a complaint with the second respondent on 27.02.2023 requesting to secure his minor son from the custody of the third respondent and since no action is taken, the present petition is filed.

2.Learned counsel for the petitioner submits that the marriage between the petitioner and late Jeniffer took place on 17.02.2019, it was an arranged marriage and both the families participated in the marriage. After the marriage, on the compulsion of his wife[late Jeniffer] the petitioner shifted his residence to East Tambaram closer to the third respondent's house. The petitioner's wife used to visit her mother/third respondent regularly, due to which there was some misunderstanding between them. He would submit that out of their wedlock, a male child, namely, Anto Avinash was born to them on 07.08.2020. According to the petitioner, his



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wife left the matrimonial home in the month of September 2022 and thereafter, she was staying with her mother/third respondent. Despite several request made by the petitioner, his wife failed to return to the matrimonial home and to his shock and surprise, on 04.02.2023, the petitioner requested that his wife died in Balaji Hospital. Thereafter, the petitioner was asking to hand over his minor son to him but it was refused by the third respondent, her sister, Bakkiyam and her daughter, Anitha. In fact, on an occasion all the three attacked the petitioner and thereafter, the petitioner made online complaint on 27.02.2023. He further submitted that the third respondent lodged a complaint with All Women Police Station, Chitlapakkam on 25.02.2023, in which the petitioner was summoned and he gave an undertaking that by 04.03.2023 he would return the sridhana household articles and other articles gifted to him during marriage and as regards 2¼ Sovereigns of gold jewels, the petitioner undertook to return within a period of two months. He further submits that now his only request is seeking custody of his minor son Anto Avinash aged about 2 years.

3.Learned Additional Public Prosecutor submits that the petitioner and late Jeniffer are relatives, it was a love cum arranged marriage took



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place on 17.02.2019 and out of the wedlock, a male child was born to them on 07.08.2020. He would submit that during the 5th month of pregnancy, the petitioner's wife went to the house of third respondent/mother and from then on, she has been staying there. He further submitted that in the meantime the petitioner developed another relationship, due to which their separation continued and the petitioner's wife never returned back to the matrimonial home. On 04.02.2023 the petitioner's wife late Jeniffer passed away due to medical complications and thereafter, the third respondent made several attempts to retrieve the sridhana articles and jewels presented during marriage. As a counter blast, the petitioner lodged a complaint with the second respondent and started demanding custody of the minor son. He further submitted that though the petitioner earlier gave an undertaking on 25.02.2023 for returning the sridhana articles, till date he had not handed over any of the articles.

4.Learned counsel for the petitioner submits that the petitioner is ready to hand over the sridhana articles and he shall hand over the article on 14.03.2023 to All Women Police Station, Chitlapakkam and as regards the gold jewels, the petitioner will hand over the same by 25.04.2023.



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5.This Court on the submissions made finds that the minor son, namely, Anto Avinash is with his mother and the maternal grandmother right from the birth and after the death of his mother late Jeniffer, the third respondent continue to take care of the minor child. We find that there is no illegal detention or forcible detention and it is for the petitioner to workout his legal remedy seeking custody as provided in law at the appropriate Forum or Court as the case may be.

6.With the above observations, the Habeas Corpus Petition is dismissed. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
13.03.2023

Index:Yes

Neutral Citation : Yes/No

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**M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.**

cse

To

- 1.The Commissioner of Police,
Tambaram City, Chengalpattu District.
- 2.The Inspector of Police,
S-15 Selaiyur Police Station, Chennai – 600 059.
- 3.The Inspector of Police,
All Women Police Station,
Chitlapakkam.
- 4.The Public Prosecutor,
High Court of Madras, Chennai - 104.

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