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H.C.P.No.574 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.574 of 2023

Asha @ Sakthi Senthilkumar
W/o.Senthilkumar

.. Petitioner

Vs.

1. The Commissioner of Police
Greater Chennai City.
2. The Deputy Commissioner of Police
Mylapore
Chennai-600 004.
3. The Inspector of Police
Pattinampakkam Police Station
Chennai-600 004.
4. M.D.Senthilkumar
S/o.Late Duraisamy

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the 3rd respondent to produce the petitioner's son by name Bhadra aged about 4 years before this Hon'ble Court from the custody of the 4th respondent and handover to the petitioner.

For Petitioner	:	Ms.J.Prithivi
For Respondents	:	Mr.R.Muniyapparaj
		Additional Public Prosecutor
		assisted by
		Mr.N.Narkeeran, Advocate
		for R1 to R3
		Mr.Sharukumar S.I.
		representing Mr.T.T.Ravichandran
		for R4

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

This order will now dispose of the captioned matter.

2. This order has to be read in conjunction with and in continuation of earlier proceedings / order made in the previous listing on 12.04.2023 and a scanned reproduction of the same is as follows:



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

(Order of the Court was made by M.SUNDAR, J.)

Captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity) has been filed in this Court on 05.04.2023. The nucleus of the captioned HCP is the petitioner's four year old son 'XXX' (we are masking the name and we shall be referring to the petitioner's son as 'absentee' for the sake of convenience and for obvious reasons).

2. Mr.I.Prithvi, learned counsel for petitioner submits that the petitioner was married to one Jayakumar, she has one daughter and one son aged 27 and 22 years respectively from that wedlock, petitioner and Jayakumar divorced and the petitioner married the fourth respondent on 01.05.2006. Learned counsel submits that there is allegation of harassment of petitioner's children from the first wedlock and such allegation is against the fourth respondent. We are informed that in this regard Spl.S.C.No.31 of 2022 on the file of Special Court for the Exclusive Trial of POCSO Act Cases is pending.

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3. Be that as it may, learned counsel submits that from the wedlock of the petitioner with the fourth respondent, absentee was born on 28.01.2019. Whereabouts of the fourth respondent / absentee is said to be unknown and the allegation that absentee is in illegal custody of fourth respondent constitutes the crux and gravamen of the captioned matter.

4. Issue notice to respondents 1 to 3.

5. Mr.R.Muniyappaiah, learned State Additional Public Prosecutor accepts notice on behalf of respondents 1 to 3 (official respondents).

6. We make it clear that this is a habeas corpus legal drill and we are concerned only with the alleged illegal detention of the absentee. Let the Prosecutor instruct the jurisdictional police (whether it is the third respondent or any other police who would have territorial jurisdiction) to do the needful by next listing.

7. List on 18.04.2023.


(M.S.J.) (M.N.K.J.)
12.04.2023

mml

2023



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3. Aforementioned 12.04.2023 proceedings shall now be read as an integral part and parcel of this order. Therefore, short forms and abbreviations used in the previous proceedings will continue to be used in the instant order also.

4. Today, Ms.J.Prithivi, learned counsel on record for petitioner, petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor assisted by Mr.N.Narkeeran, learned counsel for respondents 1 to 3 (official respondents) and Mr.Sharukumar.S.I, learned counsel representing Mr.T.T.Ravichandran, counsel on record for fourth respondent, fourth respondent together with the absentee are all before us.

5. Learned counsel for fourth respondent submits that fourth respondent has moved the 'GAWA' ['Guardians and Wards Act, 1890'] Court vide O.P.No.210 of 2023 being a petition under Sections 3, 7, 8, 9, 10 and 25 of the Guardian and Wards Act, 1890 read with Order XXI, Rules 2 and 3 of the Original Side Rules *inter alia* with a prayer for custody of the absentee and yesterday (17.04.2023), an interim order has been made by



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Hon'ble GAWA Court in O.A.No.330 of 2023 in O.P.No.210 of 2023. To be noted, 'GAWA Court' is a reference to the Court of a Hon'ble single Judge on the Original Side of this Court with portfolio/determination/allocation of work to deal with cases under GAWA. This interim order made by a Hon'ble single Judge of this Court has been placed before us and we find that the application has been taken out by the fourth respondent before us with a prayer for interim injunction restraining the petitioner before us from removing the absentee from F2, Vasanth Apartments, Block A, No.23, Jayaram Street, Thiruvanmiyur, Chennai-600 041. In this regard, we deem it appropriate to record that learned Additional Public Prosecutor, on instructions has brought to our notice that the fourth respondent is not residing in this address. Learned counsel for fourth respondent, on instructions from fourth respondent has submitted that he is at present staying with his sister Ms.Sujatha, wife of Mr.Sasikumar at No.177, Ellaiamman Koil Street, Mylapore, Chennai-600 004.

6. As regards the date of presentation / date of institution of O.P.No.210 of 2023, learned counsel for fourth respondent submits that he



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is not able to readily give the dates. Be that as it may, we find that the captioned HCP has been filed in this Court on 05.04.2023 and proceedings in the previous listing have been made on 12.04.2023 but from a reading of interim order dated 17.04.2023 made by Hon'ble single Judge, it appears that pendency of the captioned HCP in this Court has not been brought to the notice of Hon'ble single Judge. However, we leave this question open for the petitioner to canvass the same before GAWA Court and for Hon'ble single Judge to take a call on the same.

7. Learned counsel for petitioner submits on instructions that she would be moving Hon'ble GAWA Court inter alia for vacating aforementioned interim order. To be noted, all the rights and contentions of the petitioner including the contentions raised in the case on hand are preserved for this purpose and all other proceedings before GAWA Court and/or other collateral proceedings before other Fora/authorities. Though obvious, likewise, all the rights of the fourth respondent are also preserved in this regard.



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8. We drop the curtains on the captioned HCP by disposing of the same as closed albeit recording certain facts that unfurled before us in the hearing and preserving all rights of the parties in the manner set out supra. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

18.04.2023

Index : Yes / No

Speaking

Neutral Citation : Yes / No

mk

To

1. The Commissioner of Police
Greater Chennai City.
2. The Deputy Commissioner of Police
Mylapore
Chennai-600 004.
3. The Inspector of Police
Pattinampakkam Police Station
Chennai-600 004.
4. The Public Prosecutor
High Court, Madras.

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and
M.NIRMAL KUMAR, J.,

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