



H.C.P.No.614 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.614 of 2023

Syed Ahmed

.. Petitioner

Vs.

1.The Superintendent of Police,
Thirupathur District.

2.The Inspector of Police,
Alangayam Police Station, Alangayam,
Thirupathur District.

3.Asmathullah

4.Shreen

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents 1 and 2 to secure and produce the person or body of the petitioner's minor son XXXX S/o.Syed Ahamed, aged about 7 years, before this Court and handover XXXX to the petitioner.

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For Petitioner : Mr.N.Sivaprakash
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed in this Court on 10.04.2023 saying that the petitioner's minor son XXXX aged 7 years [we shall hereinafter refer to petitioner's son as 'absentee' for the sake of convenience and obvious reasons, to be noted we are masking the name] has been detained by respondents 3 and 4. To be noted, respondents 3 and 4 are private respondents and we are informed that they are father-in-law and mother-in-law respectively of the petitioner. It is further to be noted that as per the petition averments the petitioner was married to one Afrin Saba and the absentee was born from this wedlock in May of 2016. This Bench is also informed that petitioner's wife Afrin Saba died on 17.06.2018.

2.Learned counsel for petitioner adverting to the typed set of papers

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submitted that the petitioner filed G.W.O.P.No.48/2019 under GAWA [to be noted 'GAWA' stands for 'Guardian and Wards Act, 1890'] in the jurisdictional Court i.e., in the Court of Principal District Judge, Tiruvannamalai vide G.W.O.P.No.48/2019 and the jurisdictional GAWA Court in and by order dated 08.11.2022 after full trial, declared the petitioner as guardian for the absentee and also returned a finding that the petitioner is entitled to custody of the absentee. As of today, there is nothing to demonstrate that there is an appeal against this order. However, we make it clear that all the rights and contentions of all the parties will stand preserved notwithstanding this order if there is an appeal or further proceedings in the jurisdictional Court.

3.Mr.R.Muniyapparaj, learned Additional Public Prosecutor accepts notice for respondents 1 and 2[official respondents] and the third respondent is present in person with the absentee.

4.Learned Prosecutor as well as the third respondent submit that the respondents 3 and 4 [to be noted 4th respondent is the wife of 3rd respondent]



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are willing to hand over the custody of the absentee to the petitioner but the petitioner is not present in Court today. Therefore, we deem it appropriate to record this stated position of the parties and drop the curtains qua captioned HCP. Though obvious, we make it clear that it is for the respondents 3 and 4 to voluntarily hand over the custody of the absentee to the petitioner as and when petitioner approaches them. To be noted, it has become necessary to write this as the petitioner is not in Court today though respondents 3 and 4 [parents-in-law of petitioner] are ready and willing to hand over the absentee to the petitioner.

5.Captioned HCP is disposed of as closed albeit preserving all the rights and contentions of all the parties if there are any further or collateral proceedings in the GAWA Court or any other Forum/Fora or authority/authroities. There shall be no order as to costs.

(M.S.,J.) (M.N.K.,J.)
18.04.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
cse

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To

- 1.The Superintendent of Police,
Thirupathur District.
- 2.The Inspector of Police,
Alangayam Police Station, Alangayam,
Thirupathur District.
- 3.The Public Prosecutor
High Court, Madras.

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and
M.NIRMAL KUMAR, J.,

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