



H.C.P.No.797 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.797 of 2023

John Jabaraj

.. Petitioner

Vs

1.The Inspector of Police,
T-10 Thirumullaivoyal Police Station,
Thiruvallur District.

2.The Commissioner of Police,
Avadi, Commissioner Office,
Avadi, Chennai – 600 054.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondent police to produce the petitioner's minor son XXX aged about 8 years as informed by the respondent police before this Court and hand over custody to the petitioner.



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For Petitioner : Mr.M.Himavanth
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

This order will now dispose of captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity). This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 04.05.2023, 10.05.2023, 11.05.2023, 13.06.2023 and 04.07.2023, which read as follows:

'04.05.2023:

Mr.R.Muniyapparaj, learned Addl. Public Prosecutor takes notice for the respondents and he seeks time to get instructions.

Post the matter to next week for getting instructions.'



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'10.05.2023:

Mr.S.Rajakumar, learned Additional Public Prosecutor accepts notice for the respondents and confirms orally that the DNA report establishes conclusively, both paternity as well as maternity, of the petitioner and his wife qua Shakthi (child), aged about 8 years. The child is stated to be in the custody of Bala Mandir Child Protection Home, T.Nagar, Chennai.

2. Let the child be produced on 11.05.2023. Learned Additional Public Prosecutor is directed to file a comprehensive status report setting out all the details of the action taken in regard to the kidnapper, the stage of criminal case as against her as well as her antecedents with a copy served in advance upon the petitioner.

3. The report will also indicate the care given to the child thus far. Complete medical records and school records as well as other materials as relevant to the child, as on date, will also be produced.

4. List on 11.05.2023 as item 1 for production of the child as well as to await status report.'



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'11.05.2023:

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Dr. ANITA SUMANTH, J.
AND
M. NIRMAL KUMAR, J.

(Order of the Court was made by Dr. ANITA SUMANTH, J.)

Read this order in conjunction with and in continuation of order dated 10.05.2023.

2. Today, the child is present in Court along with his biological parents (hereinafter referred to as 'father and mother'). After a brief discussion, this Court believes that, in the interests of the child, holistic integration with the family, that is the parents and the siblings as well as the extended family, the shifting of the child from the present premises, which is Bala Mandir Child Protection Home, T.Nagar, Chennai (in short 'Home') to the new residence must be effected in a gradual and phased manner, rather than overnight.

3. This is bearing in mind the submission of the learned Additional Public Prosecutor that the child has expressed that he is comfortable where he is and would want to continue to stay there.

4. This is a natural phenomenon, seeing as the child has been in the home from 2017 onwards. However, since the paternity and maternity of the father and mother have been established by way of report dated 23.03.2023, undoubtedly, the child must gradually be integrated with his



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new family.

5. Thus, and taking into consideration the submission of the parents as well as the State counsel, the following directions are issued.

i) This matter will be listed on 13.06.2023. Till such time, the child will continue to reside in the Home.

ii) The parents and siblings may visit the Home as and when possible to them intimating the authorities in advance of the proposed visits.

This is also bearing in mind the fact that the child is to be promoted to 3rd standard upon reopening of the school and the schedule of the child in the school must be factored in by the new family.

iii) The child may also be taken to the parents' home to acclimatize himself with the new surroundings accompanied by a person who he trusts from the Home, to aid in the integration.

6. The DNA report dated 23.03.2023 concludes as follows;

Conclusion: From the DNA typing results of the above samples, it is found that in the absence of identical twins, Mr John Jebaraj is the Biological Father of the Male Child Sakthi @ Aaron.

7. To be noted, that the DNA analysis was made on the child on an analysis of the samples of the child, the mother and the father as follows;

Item 1: A white pouch enclosing a blood card with blood stains and marked, "17.2.23 John Jaharaj 36 Yr/M



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FILE NO. 091 of 2023

Cr.No.1538/14 DNA No.13/23 T10 Thirumullaivayil PS".

Item 2: A white pouch enclosing a blood card with blood stains and marked, "17.2.23 Sakhi @ Aaron 8 Yr/M; Cr.No.1538/14 T10 Thirumullai VAYIL PS DNA No.15/23".

Item 3: A white pouch enclosing a blood card with blood stains and marked, "17.2.23 Tamilarasi 32/F Cr.No.1538/14 T10 DNA No.14/23 Thirumullaivayil PS".

8. The tabulation containing comprehensive analysis of test result sets out conclusively the match of the DNA of the child with both father and mother.

9. In conclusion, after the testing of the samples as above, the laboratory has concluded that there is a 99.99999999999999 match as below:

Sl. No.	STR Locus Tested	Genotype			Cumulative probability of paternity of Alleged Father Mr. John Jebaraj %	Cumulative chance of exclusion of Random man %
		Alleged Father Mr. John Jebaraj	Child Sakhi @ Aaron	Biological Mother Ms. Tamilarasi		
1						
15	FGA	20.23	21.23	21.25	99.999997	99.99999999999999

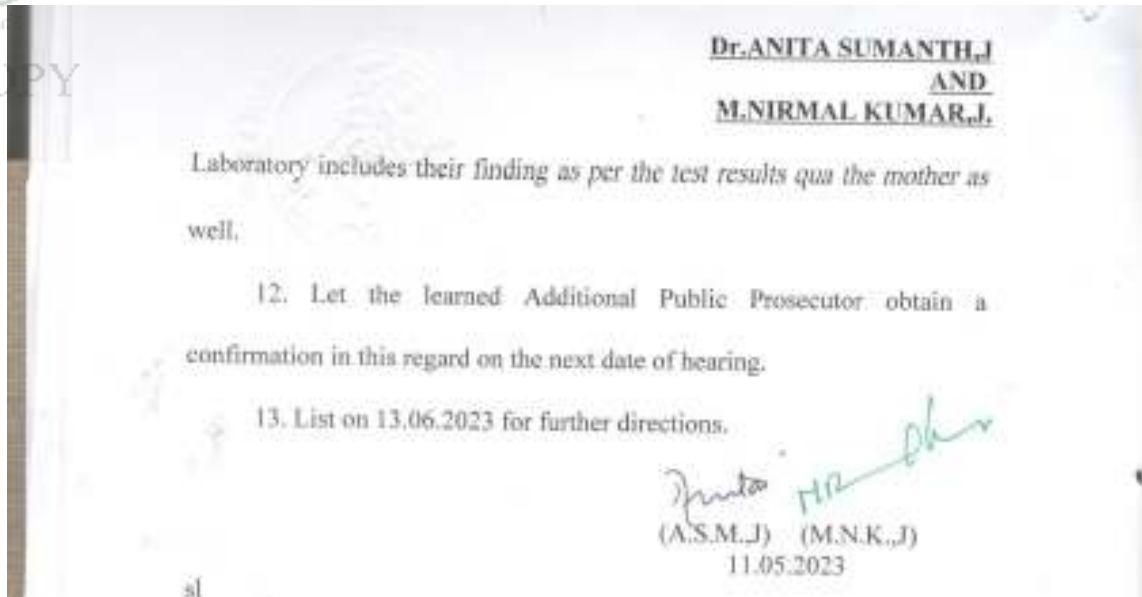
10. It is unclear as to why the conclusion does not include the name of the biological mother of the child.

11. This being a matter where the child has been taken from the parents within a month of his birth, it would be better, as a measure of certainty for his future as well, that the conclusion of the Forensic Science



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'13.06.2023:

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing by Honourable Vacation Bench on 11.05.2023. Adverting to paragraph 12, learned Prosecutor requests for some more time to file a report with supporting material. Request acceded to.

2. List three weeks hence. List on 04.07.2023.

3. Between now and the next listing, arrangement put in place vide earlier order dated 11.05.2023 will continue to operate.'



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'04.07.2023:

Re-notified.

List on Monday. List on 17.07.2023.'

2. Today petitioner, petitioner's spouse Tamilarasi, petitioner's counsel Mr.M.Himavanth, Mr.E.Raj Thilak, learned State Additional Public Prosecutor for both the respondents and the minor child XXX (we are masking the name and we shall be referring to the minor child as 'absentee' for the sake of convenience) are present in Court.

3. Adverting to our earlier proceedings dated 13.06.2023, learned Prosecutor draws our attention to the forensic examination report dated 23.03.2023 bearing reference T.No.1775/2023 DNA/PAT/59/2023 (hereinafter 'said report') and more particularly point no.3 under the caption 'Inference' thereat and submits that there is a clear and categoric mention about the mother in the said report itself. On perusing the report, we find that submission of learned Prosecutor is correct.

4. Be that as it may, learned counsel for petitioner and learned Prosecutor submit in one voice that the absentee is now with the

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petitioner and his spouse (parents) for the last 40 days. This means that the integration of the absentee with his natural parents has happened.

5. As regards the complaint viz., Crime No.1538 of 2014, let the investigation proceed in accordance with law. Adverting to the said report, learned Prosecutor submits that the person concerned has been arrested in another crime number viz., Crime No.1343 of 2017 on the file of Villivakkam Police Station but it may not be necessary to go into these aspects of the matter and it will suffice to say that investigation shall proceed in accordance with law.

6. As regards the absentee, the petitioner and his spouse (parents) assured that they will be good caregivers and they will take adequate care of their minor child. Learned counsel points out that the parents would be admitting the absentee in a new school and the institution in which the child was thus far has some reservation in giving transfer certificate owing to pendency of captioned HCP. Now that we are dropping curtains on the captioned HCP, there will be no impediment for the institution concerned to do the needful and we make this position very clear.

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7. In the light of the narrative thus far, we record the happy ending and we drop the curtains on the captioned HCP as the habeas drill has been concluded.

8. Captioned HCP is disposed of as closed in the aforesaid manner.

(M.S.,J.) **(R.S.V.,J.)**
17.07.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

- 1.The Inspector of Police,
T-10 Thirumullaivoyal Police Station,
Thiruvallur District.
- 2.The Commissioner of Police,
Avadi, Commissioner Office,
Avadi, Chennai – 600 054.
- 3.The Public Prosecutor
High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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