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H.C.P.No.898 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

Coram

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

H.C.P.No.898 of 2023

Prabhudevan

.. Petitioner

VS

1.The Superintendent of Police,
Thiruvarur District,
Thiruvarur – 614 704.

2.The State rep. by
The Inspector of Police,
Muthupettai Police Station,
Thiruvarur – 614 704.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to direct the 2nd
respondent to produce the sister of the petitioner XXX, W/o. YYY,
Hindu, aged about 24 years before this Court and set her at liberty.

For Petitioner : Ms.A.Rajeswari

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor



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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).

2. Short facts are that the petitioner's sister XXX (we are masking the name and we shall be referring the petitioner's sister as 'absentee' for the sake of convenience) got married to YYY (absentee's spouse) on 04.09.2017; that in March, 2023, YYY got job opportunity in Malaysia and left for Malaysia; that XXX and YYY have one male child from their wedlock; that the age of the male child is 3 ½ years; that it is the case of the petitioner that XXX is missing from 21.04.2023, a complaint was lodged on the same day with the jurisdictional police station (Muthupettai Police Station, Thiruvarur – 614 704); that the complaint was registered in Crime No.234 of 2023 on the same day (21.04.2023); that an FIR was registered; that apprehending illegal detention of XXX, captioned HCP was filed in this Court on 22.05.2023; that the Honourable Predecessor Bench issued notice on 24.05.2023; that there was a further listing on 07.06.2023; that the matter is listed today.



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3. In the hearing today, petitioner, petitioner's counsel Ms.A.Rajeswari, Mr.E.Raj Thilak, learned State Additional Public Prosecutor for both the respondents (official respondents), absentee, her spouse YYY and the absentee's mother (to be noted, absentee's mother is also HCP petitioner's mother) are present in Court.

4. From the submissions made by both sides, it comes to light that it is not a case of illegal detention or unlawful custody but it is a case of matrimonial discord and tussle between two parents for custody of a 3 ½ years old minor child. Therefore, we deem it appropriate to drop the curtains on the captioned HCP albeit leaving open all the rights and contentions (including rights and contentions which were raised in the captioned HCP) to be agitated before the appropriate jurisdictional Court i.e., Family Court/GAWA Court or any other appropriate Forum/Fora. **To be noted, by GAWA Court, we refer to the Court exercising jurisdiction under The Guardians and Wards Act, 1890.** If the parties approach jurisdictional Family Court/GAWA Court/Forum/Fora, the Court/Forum/Fora shall consider the matter on its own merits and in accordance with law uninfluenced by this order which has been made for the limited purpose of habeas corpus legal drill.



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5. Before concluding we record the stated position that the minor son born from the wedlock of XXX and YYY is now with the father (YYY).

6. Captioned HCP is disposed of as closed albeit preserving all the rights and contentions of all the parties concerned in the aforesaid manner.

(M.S.,J.) (R.S.V.,J.)
21.06.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

To

- 1.The Superintendent of Police,
Thiruvarur District,
Thiruvarur – 614 704.
- 2.The Inspector of Police,
Muthupettai Police Station,
Thiruvarur – 614 704.
- 3.The Public Prosecutor,
High Court, Madras.

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



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