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HCP No.1337 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1337 of 2023

Neela Narayana Sethupathi
S/o.Argumugam

.. Petitioner

Vs.

1. The Inspector of Police
T-8, Guduvancherry Police Station
Tambaram, Chennai.
2. The Commissioner of Police
Greater Chennai City Police
Vepery, Chennai-600 007.
..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the 1st respondent police to produce petitioner's daughter xxxxx, aged about 12 years before this Hon'ble Court and handover to the petitioner.

For Petitioner	:	Mr.B.Gopala Krishnan representing Ms.D.Kanaka Lakshmi
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 the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and brevity].

2. Factual matrix in a nutshell is that the petitioner was married to one Asha Banu @ Sangavi; that from this wedlock, the petitioner and Asha Banu have a daughter 'xxxxx' [we are masking the name of daughter of petitioner and Asha Banu and we shall be referring to as 'absentee' for the sake of convenience]; that the absentee is 2011 born and is therefore, 12 years old now; that there was matrimonial discord between the petitioner and Asha Banu; that this matrimonial dispute resulted in proceedings in III Additional Judge's Court, Chennai i.e., Family Court vide O.P.No.1076 of 2016; that this matrimonial proceedings ended in a memorandum of compromise dated 22.04.2018; that a decree in terms of this compromise memo was made; that this 'decree is dated 06.06.2018' [hereinafter 'said compromise decree' for the sake of convenience and clarity]; that the petitioner lodged a complaint with the jurisdictional police on 22.06.2023 saying that he is unable to trace the



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absentee; that under such circumstances, captioned HCP has been filed in this Court on 12.07.2023.

3. Today, Mr.B.Gopala Krishnan, learned counsel representing the counsel on record for petitioner is before this Court.

4. Learned counsel reiterated the aforesaid factual matrix.

5. Issue notice.

6. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for both respondents.

7. Learned Prosecutor, on instructions from Mr.R.Sakthi, Sub-Inspector of Police, T-8, Guduvancherry Police Station, Tambaram, Chennai, submits that the petitioner's former wife Asha Banu alias Sangavi and absentee are present in Court.



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8. As regards the present residence of Asha Banu alias Sangavi, on instructions from jurisdictional police, this Court is informed that the address is as follows:

'No.119/24, B3, Devi Flat,

New Street, Ayanavaram, Chennai-600 023.'

9. It is confirmed that Ms.Asha Banu and absentee are living in this address.

10. In the aforesaid circumstances, we carefully considered the facts of the matter. There is no difficulty in coming to the conclusion that this is not a case of illegal custody or unlawful detention. This is more so, as in the said compromise decree, it has been categorically agreed by parties that the custody of the absentee will be with Ms.Asha Banu alias Sangavi and that the petitioner will have visitation rights on week ends and Festivals but we do not want to delve into those aspects and we refrain ourselves from expressing any view or opinion on the same as parties are governed by said compromise decree made in the Family Court.



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11. Now that the petitioner's former wife Asha Banu alias Sangavi and the absentee are present in Court and their present residential address is also available we drop the curtains on the captioned HCP as it is not a case of illegal custody but left open all the rights and contentions of the petitioner, Asha Banu alias Sangavi and absentee to approach the jurisdictional Court or in other appropriate Fora / authority with regard to further dispute or contestation, if any.

Captioned HCP disposed of as closed albeit preserving all rights of the parties in the aforesaid manner.

(M.S.,J.) (R.S.V.,J.)
25.07.2023

Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No.

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To

1. The Inspector of Police
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and
R.SAKTHIVEL, J.,

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