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H.C.P.No.1512 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.1512 of 2023

Affrin Begum

.. Petitioner

Vs.

1. The Commissioner of Police
E.V.K.Sampath Road
Vepery, Chennai – 600 007

2. The Inspector of Police
W11, All Women Police Station
Esplanade
Chennai – 600 104

3. Parvesh Ahmed

4. Daulathunissa

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to produce the petitioner's son namely xxxx, aged about 2 years before this Court and hand over to the petitioner.

For Petitioner

:

Mr.C.K.M.Appaji

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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 the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity, convenience and clarity].

2. Factual matrix in a nutshell is that the petitioner was married to third respondent; that the marriage was solemnized on 25.08.2019 in Chennai; that the petitioner and third respondent were blessed with a son from the wedlock on 12.07.2020; that the son of petitioner and third respondent is 'xxxx' [we are masking the name and we shall be referring to son of petitioner and third respondent as 'absentee' for the sake of convenience]; that post marriage, there was matrimonial discord between the petitioner and third respondent; that it is the case of the petitioner that on 31.12.2022 fourth respondent (to be noted, fourth respondent is the mother of third respondent i.e., mother-in-law of the petitioner) called her over phone to go over to fourth respondent's house; that when petitioner went to her mother-in-law's place, the absentee was forcibly taken away;

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that it is now feared by the petitioner that absentee has been given in adoption to some other person; that the petitioner is unable to see the absentee; that it is the further case of petitioner that absentee is in unlawful custody; that under such circumstances, captioned HCP has been filed in this Court on 28.07.2023.

3. Mr.C.K.M.Appaji, learned counsel for petitioner is before this Court.

4. Issue notice.

5. Mr.E.Raj Thilak, learned Additional Public Prosecutor submits, on instructions that absentee is with the fourth respondent. Learned Prosecutor submits that an officer from the second respondent police station namely, W11, All Women Police Station, Esplanade, Chennai – 600 104 has verified the physical presence of the absentee with the fourth respondent at the address given in the HCP i.e., No.19/10, 3rd Floor, Ayyappa Chetty Street, Mannady, Chennai – 600 001. This submission is recorded. To be noted, learned Prosecutor is instructed by Ms.J.Kamatchi, Sub-Inspector of Police from W11 All Women Police Station, High Court Police Station, Chennai.



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6. Be that as it may, as regards the petitioner, learned counsel for petitioner submits that in the HCP petition, her address has been wrongly given as No.19/10, 3rd Floor, Ayyappa Chetty Street, Manndy, Chennai but she now lives with her mother in the following address:

Ms.Affrin Begum
W/o.Parvesh Ahmed
No.30, 3rd Street
Sakthi Avenue
Perumalpattu
Veppampattu
Thiruvallur District

7. In the light of the narrative thus far, we deem it appropriate to direct the second respondent to produce the absentee along with fourth respondent before Jurisdictional Magistrate (We are informed that III Metropolitan Magistrate, George Town Court is the jurisdictional Magistrate) before the end of ensuing week with advance intimation to the petitioner. The petitioner shall also be present before the jurisdictional Magistrate. Learned jurisdictional Magistrate is requested to record statements of the petitioner and fourth respondent besides ascertaining the well being of the absentee. Thereafter, the matter shall proceed in accordance with law and on its own merits. We express no opinion on other

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aspects of the matter, particularly the matrimonial discord or custody of absentee at this point of time and this is a habeas drill. All rights of all concerned qua Family Court, GAWA Court (to be noted, 'GAWA' stands for 'Guardians and Wards Act,1890') and / or any other Fora/Authorities, which shall proceed in accordance with law and merits of the matter (if approached) untrammelled by this order which has been made for the limited purpose of concluding the habeas drill on hand.

Captioned HCP disposed of in the aforesaid manner but we preserve the rights of the petitioner or any one concerned for the absentee to come to this Court again if there are any other developments.

(M.S.,J.) (R.S.V.,J.)
09.08.2023

gpa



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To

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

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