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H.C.P.No.1819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

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

H.C.P.No.1819 of 2023

S.Mariyappan

.. Petitioner

Vs

1.The Superintendent of Police,
Mayiladuthurai District,
Mayiladuthurai.

2.State rep. By
Inspector of Police,
Vaitheeswarankoil Police Station,
Mayiladuthurai District.

3.Gajendiran

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the second respondent to produce the petitioner's daughter Karthika aged about 25 years, the petitioner's grandson XXX aged about 2 years minor child before this Court from the custody of the third respondent and set them at liberty.

For Petitioner : Mr.S.Esakkimuthu

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R1 and R2

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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, convenience and clarity).

2. Factual matrix in a nut shell is that 'petitioner's daughter Ms.Karthika' (hereinafter 'first absentee' for the sake of convenience and clarity) was married to one Thiru.Iyyappan on 30.08.2018; that Thiru.Iyyappan died on 21.10.2021; that from the wedlock between Karthika and Iyyappan, there are two sons 'XXX' (first son) and 'YYY' (second son); that on 04.09.2023, petitioner lodged a complaint with the jurisdictional police station viz., Vaitheeswarankoil Police Station saying that first absentee and YYY are missing from about 04.00 a.m. on 04.09.2023; that petitioner has filed captioned HCP in this Court on 11.09.2023 fearing that first absentee and YYY (we shall be hereinafter referring to 'YYY' as 'second absentee' for the sake of convenience) have been illegally detained by third respondent (to be noted third respondent is a private respondent).

3. Today, Mr.S.Esakkimuthu, learned counsel on record for HCP



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petitioner who is before this Court advertent to the aforementioned factual matrix reiterated the same.

4. Issue notice.

5. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepted notice for the official respondents i.e., respondents 1 and 2 and learned Prosecutor is instructed by Mr.R.Ravichandran, Sub Inspector of Police, Vaitheeswaran Kovil Police Station.

6. Thereafter, from the submissions, it came to light that the petitioner is not present in Court but the third respondent as well as first absentee and second absentee (YYY/second son) are present in Court.

7. We had the benefit of interacting with the first absentee (petitioner's daughter) as well as the third respondent one after other and the following facts emerged from their submissions:

7.1 First absentee has married third respondent by her own volition voluntarily on 03.09.2022 in

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Melmaruvathur;

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7.2 First absentee's first son XXX is now with the HCP petitioner;

7.3 First absentee as well as third respondent say that third respondent was married earlier but his wives are no more and third respondent has children from that wedlock also;

7.4 First absentee (petitioner's daughter) submitted that she wants to continue her marital tie with the third respondent and the first absentee as well as third respondent submitted that they will be good caregivers for XXX and YYY and the children of third respondent from the wedlock with his deceased wives;

7.5 First absentee submitted that her first son XXX is with the petitioner and the petitioner is not even permitting her to see her first son.

8. From the narrative thus far, it is clear that this is not a case of illegal detention or unlawful custody. Therefore, we deem it appropriate to drop the curtains on the captioned HCP. However, we hasten to add that all the rights and contentions of the first absentee



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(petitioner's daughter), third respondent as well as the petitioner are preserved for working out their remedies in an appropriate Court/s/Forum/Fora/Authority/Authorities with a suitable petition as regards custody of XXX (first son).

9. If any other collateral or connected proceedings are commenced, all the rights and contentions of all the parties are preserved. If the jurisdictional GAWA Court (to be noted, by GAWA Court, we refer to the Court exercising jurisdiction under The Guardians and Wards Act, 1890) is approached by any of the parties, the GAWA Court shall consider the plea on its own merits and in accordance with law untrammelled by the closure of the captioned HCP.

10. On conclusion of the captioned HCP, a request was made to this Court to refer the matter to the District Mediation Centre attached to Mayiladuthurai District Court. The petitioner, petitioner's daughter (first absentee), third respondent shall be present before the District Mediation Centre, which is an adjunct qua Mayiladuthurai District Court on Monday i.e., on 25.09.2023 and the District Mediation Centre is



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requested to enter upon mediation qua custody of XXX/first son of first absentee from her wedlock with Thiru.Iyyappan i.e, custody as between the petitioner (grandfather) and first absentee (mother).

11. Captioned HCP is disposed of as closed albeit with the aforementioned observations and preservation of rights in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.) **(R.S.V.,J.)**
21.09.2023

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

To

- 1.The Superintendent of Police,
Mayiladuthurai District,
Mayiladuthurai.
- 2.The Inspector of Police,
Vaitheeswarankoil Police Station,
Mayiladuthurai District.
- 3.The District Mediation Centre,
Mayiladuthurai.
- 4.The Public Prosecutor,
High Court, Madras.

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

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