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H.C.P.No.1809 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1809 of 2023

Mrs.Francy Salmona

...Petitioner

Vs.

1.Superintendent of Police

Krishnagiri District,

Krishnagiri.

2. Inspector of Police,

All Women Police Station,

Hosur, Krishnagiri.

3. Inbaraj Alfred

...Respondent

Prayer : Petition filed under Article 226 of the Constitution of India in the nature of Writ of Habeas Corpus directing the 1st and 2nd respondents to produce minor daughter, I. Jelisia Steny before this Court and handover her custody to the petitioner.



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For Petitioner : M/s.S.Suresh
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R1 and R2
Mr.S.Senthilvel
for R3

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

The petitioner herein is the mother of the detenue, and she has filed this Habeas Corpus petition. The third respondent is the father of the detenue.

2. The case of the petitioner is that she married the third respondent on 25.08.2011 and she begot a female child; that after giving birth to a daughter on 05.04.2015, she also gave birth to a son on 29.10.2017. It appears that there is a matrimonial dispute between the petitioner and the third respondent. A petition for divorce was filed by the petitioner herself under Section 10(X) of the Christian Marriage Act, in I.D.O.P.No.89 of 2023, before the Family Court at Chengalpet.

3. It appears that the third respondent, pursuant to the matrimonial dispute, took the custody of the petitioner's minor son, and this led to the filing



of an FIR in Crime No.45 of 2023 and Habeas Corpus Petition in H.C.P.No.933 of 2023. This Court, by an order dated 28.06.2023, closed the Habeas Corpus Petition, directing the third respondent to appear before the District Court, Chengalpet, on 03.07.2023 along with the minor son. It is the specific case of the petitioner that the understanding between the parties before the Family Court at Chengalpet, where the petition for divorce was pending, is that the third respondent should keep the minor son and the petitioner should have custody of the minor daughter. However, it is pleaded that the third respondent took custody of the minor daughter without intimation to the petitioner from the tuition centre. Thereafter, this petition was filed, making serious allegations.

4. Pursuant to the filing of this petition, the third respondent has appeared with the minor daughter before this Court on 17.11.2023. When we enquired with the minor daughter, she was not inclined to go with the mother and started crying. However, taking note of her conduct and the facts, this Court permitted the petitioner to have custody from 17.11.2023 until today morning at 10.30 A.M.

5. Today, the petitioner, third respondent and the detinue/minor child are present before this Court. The minor child now on enquiry states that she would



like to stay with her mother and she does not want to go with her father/third respondent. Though this Court is not inclined to go by the statement of the minor child, this Court is of the view that, being a female child, custody of her with the mother will be in the interest of the detinue as well as the family. Since the detinue/minor child was taken from the custody of the mother/petitioner without her knowledge and that too from the tuition centre, this Court is of the view that the petitioner is entitled to the custody of the minor child. Accordingly, we are directing the minor child to be with the custody of her mother.

6. The learned counsel appearing for the petitioner/mother of the detinue submitted that the third respondent/father of the detinue, may be permitted to exercise his visiting rights and this Court may, by order permit the third respondent to have visiting rights during holidays at least once in a week.

7. The petitioner, who is now present before this Court though expressed her serious objections to permit the third respondent to have temporary custody, however agreed for the third respondent/father to visit the child either in the place of her School or any common or public place with prior intimation to the petitioner.



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8. It is made clear that the meeting place shall be detenue's School or any other place that is either common to both or a public place with the due concurrence of the petitioner. It is also open to the husband/third respondent to file a petition under the Guardian and Wards Act, 1890, for appropriate further relief. This arrangement is only temporary and for a period of three months from today.

9. Further, the third respondent shall cooperate if his assistance, coordination or cooperation is required for withdrawing the child from the present School in Chennai and to give admission to the School at which she was earlier studying (i.e) Sri Vijay Vidyalaya School, Hosur, as the said School already has given a bonafide certificate that they are prepared to admit the child back to their School.

10. It is also open to the petitioner to permit the third respondent to come to her house and take the child. During Christmas and Pongal holidays, the third respondent is permitted to take the child from 10.30 A.M., and to hand over the child before 6.00 P.M., on any one day of each spell.



11. It is in these said circumstances, this Court while closing this HCP by recording the above facts, permits the third respondent to visit the minor child on any day during the holidays after prior intimation to the petitioner in accordance with this order.

12. With the above observations, this Habeas Corpus petition is closed.

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

20.11.2023

Internet : Yes Index : Yes / No

Neutral Citation : Yes / No

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To

1. Superintendent of Police

Krishnagiri District,

Krishnagiri.

2. Inspector of Police,

All Women Police Station,

Hosur, Krishnagiri.



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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.
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