



WEB COPY



H.C.P.No.2015 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

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THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.2015 of 2023

P.Vimalnath

... Petitioner

Vs.

1.The Commissioner of Police,
Vepery, Chennai – 07.

2.The Deputy Commissioner of Police,
Poonamallee High Road,
Kilpauk, Chennai – 10.

3.The Assistant Commissioner of Police,
Ayanavaram Range, Chennai – 10.

4.The Inspector of Police,
G-5, Secretariat Residential Police Station,
Chennai – 09.

5.Rani

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the detenus namely Nikilan, aged 6 years and Tharun Mithran, aged 4 years, son of Vimalnath before this Court from illegal custody of the 5th respondent and handover to the petitioner.

For Petitioner : Mr.J.Lingeswaran

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R1 to R4



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ORDER

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

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Seeking a direction to respondent nos. 1 to 4 to produce the children of the petitioner viz., Nikilan, aged 6 years and Tharun Mithran, aged 4 years, before this Court from the illegal custody of the 5th respondent and handover them to the petitioner, the present habeas corpus petition has been filed.

2. It is the case of the petitioner that he married one Sivasankari, daughter of the fifth respondent in the year 2015 and he had two sons from the wedlock. The petitioner's wife was suffering from mouth cancer and died on 22.03.2023. The fifth respondent had taken the two children even before performing the last rites of his wife. It is the further case of the petitioner that petitioner's mother-in-law/fifth respondent has illegally detained the minor children and the petitioner was not even permitted to see his children. The petitioner earlier made a complaint before the first respondent on 26.08.2023 against the fifth respondent for giving custody of the minor children to the petitioner.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for respondents 1 to 4.



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4. This Court having regard to the sequence of events finds that the petitioner has bothered to give complaint making allegations against the fifth respondent viz., the grandmother of the minor children only on 26.08.2023. Even according to the petitioner, the children are aged six years and four years respectively and therefore the fact that the petitioner's mother-in-law had taken custody and having them for the past more than six months shows that the children are not in illegal custody. In cases like this, the Courts will have to consider the welfare and interest of the minor children. Therefore, this Court is of the view that the petitioner has to approach the appropriate Court for custody of the children and convince the Court that the custody of the children with the father will be in the interest and welfare of the minor children.

5. With the above observation, this habeas corpus petition is dismissed, however, with liberty to the petitioner to approach the appropriate Court under [The Guardians and Wards Act, 1890](#) for custody of the minor children.

(S.S.S.R., J.) (S.M., J.)
19.10.2023

Index : Yes / No
Neutral Citation : Yes / No
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