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HCP No.2389 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P.No.2389 of 2022

P.Dinakaran
S/o.Paramasivam

.. Petitioner

Vs.

State represented by its
1.The Commissioner of Police,
District Commissioner Office,
5/1, HVF Estate Bakthavachalapuram,
Avadi, Chennai - 54.

2.The Inspector of Police,
Mangadu Police Station,
Kancheepuram.

3.Adhilakshmi
W/o.Munusamy

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the second respondent to produce the body of the petitioner's minor son Datchith



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S/o.Dinakaran, aged 2 years, before this Court, who is in the custody of the third respondent and hand over his custody to the petitioner.

For Petitioner : Mr.D.Padmanabhan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor [R1 & R2]
Mr.M.Devanthiran [R3]

ORDER

[Made by **P.N.PRAKASH, J**]

This petition has been filed seeking a direction to the second respondent to produce the petitioner's minor son Datchith, aged 2 years, before this Court, who is in the custody of the third respondent and hand over his custody to the petitioner.

2. On 19.12.2022, we passed the following order:

"On 02.12.2022, we passed the following order:-

“On 28.11.2022, we passed the following order:

“Today, Mr.R.Venkatesan, Sub-Inspector of Police, T-14 Mangadu Police Station [Mobile No.98408 66797], is present.

2. Mr.S.C.Vishwanth, learned counsel appearing for the third respondent, submitted that the child was given vaccination on 05.11.2022, on account of which, the child is little ill. Learned counsel sought time to produce the child.

3. On instructions, learned Additional Public Prosecutor submitted that when the police went to the



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residence of the third respondent, they found the door locked and there was no one in the house.

4. We direct the second respondent/police to produce the third respondent and the child before us on the next hearing date.

Call on 02.12.2022.”

2. Today, Mr.D.Balasubramaniam, Sub-Inspector of Police, T-14 Mangadu Police Station [Mobile No.88387 82250], is present. Adhilakshmi [third respondent herein] is present.

3. Mr.V.Paarthiban, Advocate, entered appearance for Adhilakshmi [third respondent herein] and submitted that the detenu is under treatment in Bethesda Hospital and Child Care Centre, Tambaram and if some time is granted, there is a possibility of the parties arriving at a settlement and report to this Court.

4. Learned counsel for the petitioner submitted that access should be granted to the petitioner to see his son.

5. We are of the view that the petitioner, being the father of the detenu, cannot be denied access to meet his son. Therefore, we permit the petitioner free access to meet his son either in the hospital or in the house of the third respondent without disturbing the line of treatment for the detenu. The third respondent shall not prevent the petitioner to visit the detenu. If the 3rd respondent or her family members obstruct, it is open to the petitioner to approach the Inspector of Police, Mangadu Police Station, who shall ensure that the order of this Court is not violated.

Call on 15.12.2022.”

2. On 15.12.2022, we passed the following order:

“Mr.R.Muniyapparaj, learned Additional Public



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Prosecutor takes notice for the respondents 1 and 2. He seeks time.

We direct the 3rd respondent to be present along with her child on 19.12.2022.

The respondent police shall ensure the production of the 3rd respondent along with the child on the next date of hearing.

Post on 19.12.2022.”

3. Today, Mr.R.Venkatesan, Sub-Inspector of Police, T-14, Mangadu Police Station, is present. P.Dinakaran (petitioner); Adhilakshmi (3rd respondent); and the minor child Datshith, aged about 2 years, are also present.

4. The 3rd respondent has filed counter affidavit dated 16.12.2022, wherein, in para 7 it is stated as under:-

“I submit that I filed a petition under the guardian and wards act 1890 before the Principal District Judge, Kancheepuram, and the same is pending in GWOP No.157 of 2022. The learned Judge was pleased to order interim protection order under Section 12(1) of the said act on 14.12.2022 till 19.12.2022 as against the said petitioner.”

5. In our view, when this court is seized of the matter and had, by order dated 02.12.2022, permitted the petitioner to visit the child, the 3rd respondent, perhaps in order to get over the aforesaid directions, has filed a petition in GWOP No.157 of 2022 under the Guardian and Wards Act and has obtained an interim order, without apprising the District Court, Kancheepuram, about the order passed by this court. This act of the 3rd respondent lacks bona fide and cannot be countenanced. However, the fact remains that the petitioner is the biological father of the child. Though it is alleged by the 3rd respondent that the petitioner is responsible for the suicide of her daughter, that has to be decided only in the criminal proceedings



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that has been initiated against the petitioner. Pendency of the criminal proceedings cannot be used as a weapon to deny the biological father of his right to the custody of the child. Hence, we handed over the custody of the child to the petitioner.

Post this matter of 03.01.2023 for further proceedings."

3. Pursuant to the above, both sides submitted that the child is with the petitioner and it appears that it has got adapted itself with its biological father.

Recording the same, this Habeas Corpus Petition is closed.

[P.N.P., J] [N.A.V., J]
03.01.2023

Index: Yes/No
gm/ssr

To

1. The Principal District Judge,
Kancheepuram.
[G.W.O.P.No.157 of 2022]

2. The Commissioner of Police,
District Commissioner Office,
5/1, HVF Estate Bakthavachalapuram,
Avadi, Chennai - 54.

P.N.PRAKASH, J
and
N.ANAND VENKATESH, J

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3. The Inspector of Police,
Mangadu Police Station,
Kancheepuram.

4. The Public Prosecutor,
High Court, Madras.

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