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H.C.P.No.2364 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.12.2023

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

H.C.P.No.2364 of 2023

S.Vignesh

... Petitioner

Vs.

1.State Rep. By
The Assistant Commissioner of Police,
Pallavaram Range, Pallavaram,
Chennai – 600 043.

2.The Sub-Inspector of Police,
Sankar Nagar Police Station,
Pammal, Chennai – 600 075.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the petitioner's minor son V.Abhyanth Rudhradev, 9 month old infant before this Court and handover the custody to the petitioner forthwith.

For Petitioner : Mr.T.Selvasivakumar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind



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ORDER

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

Seeking a direction to the respondents to produce the petitioner's minor son V.Abhyanth Rudhradev, aged 9 months before this Court and handover the custody to the petitioner forthwith, the present habeas corpus petition has been filed.

2. This petition is filed by the father of the infant, who is just nine months old. The petitioner is admittedly the biological father of the infant by name V.Abhyanth Rudhradev. It is also stated by the petitioner himself that his wife Swati died on 08.09.2023 by committing suicide. Though initially an FIR was registered under Section 174(3) Cr.P.C., it was later altered and the petitioner was charged for the offence under Section 306 IPC. At the time of arrest of the petitioner, a police officer appeared to have taken the infant from the custody of the petitioner and handed over the child to the father-in-law of the petitioner. The petitioner states that he is the natural guardian of the minor child and that he has parents and relatives to take care of the minor child.



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3. The minor child was produced before this Court by the respondent police. The father-in-law and mother-in-law of the petitioner are also present before this Court along with the child. On enquiry, the father-in-law of the petitioner stated that he and his wife are not inclined to hand over the custody to anyone as they have nobody else in the world except the minor child. That cannot be a reason for consideration of custody of the minor child. The father-in-law of the petitioner also told us that he will commit suicide if the Court directs the child to be handed over to the petitioner. The attitude and behaviour of the father-in-law of the petitioner also gives an impression that he is not mentally alright. Therefore, this Court has to record its concern that the welfare and the well-being of the minor child will not be safe in case the custody is with the father-in-law of the petitioner.

4. The petitioner being a natural guardian of the minor child, we find no reason to deny his right as a father. It is also in the interest of the minor child to be in the custody of the father, who is really interested and responsible for the welfare and well-being of the minor child. He will be the best person to take care of the minor child. Except making a bald statement that there is no one in the family of the petitioner to take care of the minor child, the



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petitioner's father-in-law and mother-in-law present in the Court are not in a position to give valid reason as to why the petitioner should not have the custody of minor child.

5. Learned Additional Public Prosecutor has produced before this Court a few records in connection with the suicide of the mother of the detenu. Surprisingly, one of the documents contains the signatures of the mother of the detenu and the father-in-law of the petitioner. The father-in-law of the petitioner has obtained a letter in the form of agreement from his own daughter to the effect that henceforth he has no responsibility or duty towards his daughter, the deceased. This document is typed in a stamp paper and is bearing date 10.02.2023. The facts that are recorded in the said document not only show that the petitioner's wife had attempted suicide on several occasions but also the attitude of her father. Even though different interpretations are possible, this Court without judging the father-in-law of the petitioner on this, finds that custody of the minor child should be with the father/petitioner, who is the natural guardian and person, who has more concern and responsibility for the well-being of the minor child.



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6. Considering the facts and circumstances of the case, this Court finds that the custody of the minor child should be with the petitioner and it is open to the petitioner's father-in-law and mother-in-law to move the appropriate Court for custody of the minor child if it is warranted after proving that the custody of the minor child with them would be in the interest of the minor child.

7. With the above observation, the habeas corpus petition stands closed.

(S.S.S.R., J.) (S.M., J.)
11.12.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Assistant Commissioner of Police,
Pallavaram Range, Pallavaram,
Chennai – 600 043.
- 2.The Sub-Inspector of Police,
Sankar Nagar Police Station,
Pammal, Chennai – 600 075.
- 3.The Public Prosecutor,
High Court, Madras.



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