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H.C.P.No.2340 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.2340 of 2023

Mr.Shanmugam

... Petitioner

Vs.

1.The Commissioner of Police,
O/o.Commissioner of Police,
Tambaram, Chennai.

2. State: Inspector of Police,
St. Thomas Mount Police Station,
Chennai.

3. Mrs.Syed Ali Ravid G

4. Gajini Mhammed

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus, directing the 2nd respondent to produce the petitioner's son, aged about 3 months, before this Court from the illegal custody of the 3rd and 4th respondents and hand over the custody to the petitioner.

For Petitioner : Mr.C.Manikandan

For Respondents : Mr.E.Raj Thilak (for R1 & R2)
Additional Public Prosecutor
assisted by Mr.C.Aravind



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Mrs.R.K.Sekina Reshma (for R3 & R4)
(Vakalat not filed)

ORDER

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

This Habeas Corpus Petition is filed by the person, to direct the 2nd respondent to produce his son, who is just aged about 3 months, before this Court, from the illegal custody of the 3rd and 4th respondents.

2. It is the case of the petitioner that the 3rd respondent approached the petitioner with the proposal to marry the petitioner after her divorce; that she also stated that she gave 'Thalaq' to her husband and that she started living with the 3rd respondent as husband and wife. It is also his further case that in the year 2022, the 3rd respondent conceived and begot a male child on 04.07.2023 at St.Isabel's Hospital, Chennai, due to the said relationship.

3. After the birth of the child, it is the case of the petitioner that the 3rd respondent sold his child to some third party without his knowledge. Stating that the respondents 3 and 4 refused to hand over the child to him and that he was forced to lodge a complaint against the 3rd respondent and her father/4th respondent, to get the child, the petitioner has come



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forward with this petition under the pretext that the 2nd respondent refused to entertain the complaint.

4. The respondent Police on enquiry found that the 3rd respondent is already married and that she does not want to live with the petitioner.

5. A counter affidavit is filed by the mother of the detenu/3rd respondent with the following contents.

(i) First of all, it is stated that the minor infant is under the lawful custody of the 3rd respondent being the biological mother and natural guardian of the minor detenu. She had stated that the minor infant is her son, born through her husband by name Jakir Hussain. She admits that she had some misunderstanding with her husband by name Jakir Hussain, with whom she got married in the year 2019; that she had been blessed with two children out of the said wedlock; that the elder daughter of the 3rd respondent is 7 years old; and that the other child, the detenu herein is just five months old.

(ii) On account of her husband's ill treatment and disagreements, the 3rd respondent appears to have developed some intimacy with the petitioner. However, the 3rd respondent realised little time after, that the



petitioner is still worse and not a reliable guy and wanted to be away from the petitioner to save her marriage.

(iii) The trouble started when the petitioner started following her by giving false promises that he would marry her and give her a happy married life. The 3rd respondent admits even the fact that she was made to elope with the petitioner in January 2023 when she was 4 months pregnant with her husband's 2nd child.

(iv) While admitting the physical relationship the petitioner had with her, the 3rd respondent has realised that the petitioner is a chronic alcoholic. It is stated by the 3rd respondent that the petitioner had abused the 3rd respondent and inflicted both physical and mental torture to her.

(v) According to the 3rd respondent in the counter affidavit, after realising that the petitioner is a bad guy, the 3rd respondent wanted to snap the relationship with the petitioner. However, it is her further case that the petitioner is now threatening her to come back to an illegal relationship or else he would not allow her to live until she rejoins him. In short, the 3rd respondent is more frightened because of the black-mailing attitude and intimidation to force her to an illegal relationship.



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(vi) After narrating the ways in which the petitioner was ill-treating the 3rd respondent, the 3rd respondent made a statement before this Court that she and her family are always in constant fear because of the petitioner's threats.

6. The learned counsel for the 3rd respondent read through the counter affidavit in detail and states that the petitioner is compelling the 3rd respondent to return to an illegal relationship under constant threat and that this petition is filed not only to spoil her reputation but also to force her for an illegal relationship.

7. While reiterating the contention of the 3rd respondent in the counter affidavit that the minor infant is the son born to the 3rd respondent through her husband, Jakir Hussain and the minor infant is under the lawful custody of the 3rd respondent, the learned counsel for the 3rd respondent seeks dismissal of the petition with exemplary costs.

8. This Court heard the learned counsel appearing on either side



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and perused the records.

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9. The petitioner has not denied the fact that the 3rd respondent is married to another person by name Jakir Hussain. However, he would state that the marriage between the 3rd respondent and her husband Jakir Hussain had come to an end. Except stating that the infant is born to him, he has no record to show that the relationship between the petitioner and the 3rd respondent was started to lay a legitimate paternity claim over the child.

10. Absolutely, there is no document produced to show any marriage between the petitioner and the 3rd respondent. Except the records relating to pregnancy treatment at Government Hospital, the discharge summary, the birth history of the child and photographs, no other authenticated record is produced to prove the legitimacy of his claim as father of the child. There is a presumption in favour of 3rd respondent's version in law.

11. When the 3rd respondent is a married woman, this Court is



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unable to accept the claim of the petitioner to recognise him as the father of the infant child.

12. Having regard to the allegations that the petitioner has made against the 3rd respondent, this Court is convinced that the petitioner has approached this Court just to force the 3rd respondent to live in an illegal relationship with the petitioner. The photographs produced by the petitioner would only show the real intention behind this petition.

13. Therefore, having regard to the nature of the averments and the conduct of the petitioner, this Court finds that the petitioner's request cannot be considered and he cannot be permitted to get away with this petition, which has been filed with ill-motive and with unlawful object. Hence, this petition is dismissed with costs of Rs.2 Lakhs [Rupees Two Lakhs Only] payable by the petitioner to the 3rd respondent, within a period of six weeks from the date of receipt of a copy of this order.

14. With the above directions, this Habeas Corpus Petition stands dismissed with costs. The petitioner shall not cause any problem to the



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3rd respondent in future and the 2nd respondent may give sufficient protection to the 3rd respondent at request.

15. Post this matter for reporting compliance on 29.01.2024.

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

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

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2. The Inspector of Police,
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3.The Public Prosecutor,
High Court, Madras.



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