

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.163 of 2023

P.Sharmil Rani

... Petitioner / Detenue's Mother

Vs.

1.The Superintendent of Police,
Theni District.

2.The Deputy Superintendent of Police,
Uthamapalayam, Theni District.

3.The Inspector of Police,
Gudalur Police Station, Gudalur South,
Theni District.

4.The Inspector of Police,
All Women Police Station, Uthamapalayam,
Theni District.

5.P.Natarajan

6.N.Selvi

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents 1, 2 and 4 to produce the body or person of the petitioner's son, namely, B.Jeffrin Samuel, S/o.N.Bibin Kumar, aged 2 ½ years, a minor before this Court and hand over the custody of him to the petitioner.

For Petitioner : Mr.M.Kannan

For R1 to R4 : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

For R5 & R5 : Mr.D.Srinivasaragavan

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner, seeking production of her son, namely, Jeffrin Samuel, aged about 2 ½ years, has filed this Habeas Corpus Petition.

2. There are two children born out of the petitioner / wife and her husband, namely, Bibin Kumar. The husband was working in a foreign country. At that time, this Habeas Corpus Petition was filed with a fact that one child was with the petitioner / wife and other child was with the parents of the husband at Idukki District, Kerala State.

3.After serving notice, when this Habeas Corpus Petition was taken up for hearing, the husband appeared before this Court and after some conciliation effort taken by the earlier Bench, where one of us was a party, the following order has been passed on 01.03.2023:-

“Pursuant to the direction of this Court, the respondents 5 and 6 have brought the minor child of the petitioner aged about 2 ½ years before this Court today. The petitioner's husband also present before this Court. After considering the nature of dispute, this Court finds that it is a case of some unwanted interference of the elders, the spouse have developed difference of opinion and hence, the minor boy is left with the parents of the husband, who are arrayed as the respondents 5 and 6. Another baby was born to them and now 8 months old, that baby is now under the care and custody of the mother/ petitioner herein.

2.After few deliberation, the husband of the petitioner agrees to set up a nuclear family at Chennai with the petitioner and the minor boy. Since he is presently employed in abroad he is either to terminate the contract or to join the duty till the period of contract. Hence, he requires time to set up nuclear family at Chennai.

3.Taking note of the said fact, the matter is adjourned to 27.03.2023 for further orders.”

4.Pursuant to which, when this Habeas Corpus Petition is taken up for hearing today, the learned counsel for the respondents 5 and 6, who are the parents of the husband, as well as the husband though he is not a party in this petition, would submit that, pursuant to the earlier conciliation to set up a nuclear family at Chennai, the husband has given up the job in the foreign country and had come back to India and though he has taken best effort to find out a job, so far that has not been fructified. Insofar as the petitioner / wife is concerned, though she is qualified to hold some job, as on today, she is also jobless. When that being so, it is the big question for both the husband and wife as to whether without any job a nuclear family can be set up for which can take a residential house for rent at Chennai?. This has not been so far considered by both sides and in the meanwhile, one child, who is with the custody of the parents of the husband, is continuously in their custody and in this regard, it seems that already the parents of the husband approached the concerned Court ie., Family Court, Kattappana, Kerala State and filed O.P.No.42 of 2023, wherein I.A.No.2 of 2023 was filed, where an interim order of injunction was granted, restraining the respondent / wife and others from taking the minor child, namely, Jeffrin Samuel from the custody of the petitioners except under due process of law

till the disposal of the original petition. The said interim order is still in force.

5. When that being the position, one child since is with the wife and another child is with the husband of course along with the parents of the husband at native place, ie., Idukki District, Kerala State, we are of the view that, there has been no illegal custody of the child and insofar as setting up the nuclear family or otherwise to settle the issue amicably between the petitioner as well as her husband is concerned, they can either conciliate themselves and come to the conclusion or otherwise they can workout their remedy by filing appropriate proceedings in the manner known to law.

6. In view of the aforesaid, we are of the view that no further orders are required in this Habeas Corpus Petition. Therefore, this Habeas Corpus Petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)
27.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MYR

R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

MYR

To

- 1.The Superintendent of Police,
Theni District.
- 2.The Deputy Superintendent of Police,
Uthamapalayam, Theni District.
- 3.The Inspector of Police,
Gudalur Police Station, Gudalur South,
Theni District.
- 4.The Inspector of Police,
All Women Police Station, Uthamapalayam,
Theni District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P.(MD)No.163 of 2023

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