



H.C.P.(MD) No.330 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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P.Sujitha

... Petitioner / Mother of the Detenue

Vs.

1.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

2.The State Rep. by
The Inspector of Police,
Pallavoor Police Station,
Pallavoor,
Tirunelveli District.

3.G.Suresh

4.G.Manjula

5.S.Ganesan

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the 2nd Respondent to secure petitioner minor lactate baby namely Abinaya Sri aged about 21 months,



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residing at Door No.45, Amman Kovil Street, Soochikulam, Uralvaimozhi Post, Radhapurm Taluk, Tirunelveli District and subsequently produce her before this Hon'ble Court and later hand over her custody to petitioner forthwith.

For Petitioner : Mr.S.Palani Velayutham

For Respondents : Mr.A.Thiruvadi Kumar,
1 & 2 Additional Public Prosecutor

For Respondents : Ms.S.Vanitha
3 to 6

ORDER

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

This Habeas Corpus Petition has been filed seeking a direction to the second respondent to secure the minor baby of the petitioner viz., Abinaya Sri, aged about 21 months, residing at Door No.45, Amman Kovil Street, Soochikulam, Uralvaimozhi Post, Radhapurm Taluk, Tirunelveli District, and produce her before this Court and to handover her to the custody of the petitioner.

2. The petitioner is the mother of the 21 month old child, the third respondent is its father and the fourth and fifth respondents are the parents of the third respondent.

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3. When this Habeas Corpus Petition, after notice, is taken up for hearing, the second respondent has produced the detainee child along with the third respondent. The petitioner is also present before this Court.

4. It was contended on behalf of third respondent by his counsel that, before the concerned Court i.e., Family Court at Chennai, H.M.O.P. No. 3509 of 2022 for taking divorce between the petitioner and the third respondent under mutual consent had been filed, where it has been agreed upon by the petitioner/wife that the custody of the child would be with the father i.e., the 3rd respondent.

5. Based on such agreement, when they appeared before the Family Court on 27.02.2023, it is claimed by the learned counsel for the third respondent that, the petitioner had agreed to handover the child to the third respondent even before such a custody is decided by the Court after the mutual consent petition filed and is pending before the Family Court as stated supra.



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6. However, today, the petitioner has submitted that she has never agreed for handing over the child to the third respondent and only she has signed in the petition for seeking divorce from the third respondent. Therefore, the 21 month old lactate baby, which is the detinue, being the natural guardian must be with the mother atleast for the time being and this issue as to who has to take custody of the child can be decided by the appropriate Court at a later point of time depending upon the outcome of the mutual consent divorce petition filed by the parties.

7. For this arrangement, the third respondent also has agreed and recording the aforestated statement made by the petitioner as well as the third respondent, this Court is inclined to dispose of the Habeas Corpus Petition in the following terms:-

- i. that the detinue baby child of 21 month old viz., Abinaya Sri, shall be with the custody of the petitioner for the time being.
- ii. Insofar as the custody of the said child on permanent basis, it is for the third respondent as well as the petitioner to workout their remedies by filing appropriate petition before the concerned Court, where already the H.M.O.P. as stated supra in H.M.O.P. No.3509 of



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2022 is pending for getting divorce under mutual consent.

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8. In view of the aforestated, this Habeas Corpus Petition, by recording the production of the detinue child, which has been handed over to the petitioner, is closed.

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

14.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

To

- 1.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
- 2.The Inspector of Police,
Pallavoor Police Station,
Pallavoor,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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