



HCP(MD)No.394 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.04.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

H.C.P.(MD)No.394 of 2023

Jeyashree

.. Petitioner

Vs.

State rep. by

1.The Superintendent of Police,
O/o. the Superintendent of Police,
Madurai District,
Madurai.

2.The Inspector of Police,
Alanganallur Police Station,
Madurai District.

3.Saravanakumar

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents 1 and 2 to produce the body of the detenu by name Sanjaykumar aged about 3 years, son of Saravanakumar, before this Court and hand over him custody to the petitioner.



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For Petitioner : Ms.A.Rajini
For Respondents : Mr.RMS.Sethuraman for
R1&R2
Additional Public Prosecutor
Mr.G.Karuppasamy Pandian

ORDER

[Order of the Court was made by **R.SURESH KUMAR, J.**]

This Habeas Corpus Petition has been filed for a direction to the respondents 1 and 2 to produce the body of the detenu by name Sanjaykumar aged about 3 years, son of Saravanakumar, before this Court and hand over him custody to the petitioner.

2.The detenu, who is three years old, by name Sanjaykumar is the son of the petitioner as well as the third respondent. The third respondent is the husband of the petitioner.

3.The case of the petitioner is that the detenu has been forcibly taken from the custody of the petitioner by the third respondent and thereafter, the petitioner has not even been permitted to see the child by the third respondent and his family members. Only at this juncture, this Habeas



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Corpus Petition has been filed alleging that the detenu has been abducted by the third respondent from the petitioner and the detenu has been in the illegal custody of either with the third respondent or some other third parties connected to the third respondent.

4. Today, when this petition was taken up for hearing, the detenu has been produced before this Court through the respondent police. The petitioner is also present before this Court.

5. The learned counsel for the third respondent would submit that since he is the father of the detenu and therefore, he is the natural guardian with whom only the detenu is living and therefore, it cannot be termed as an illegal custody. He also would submit that in the earlier occasion, a Habeas Corpus Petition has been filed with regard to the custody of the child and at that time, the petitioner, due to some physiological change of her, as admitted by her, had come forward voluntarily to relinquish the right of keeping the detenu.



6. However, the learned counsel for the petitioner would submit that no doubt there has been a physiological change in the anatomy of the petitioner and therefore at this juncture, it may not be possible for her to go and see the detenu, who is in the custody of the third respondent and therefore, atleast two days in a week, the child can be handed over to the petitioner for her custody and if that kind of arrangement is made, that would be sufficient for the petitioner, she contended.

7. However, the third respondent, who appeared before this Court along with the detenu, stated that already the petitioner has relinquished her right and for the interest of the child, the third respondent has been nurturing the child with utmost care. When that being so, even for visitation right, if any, this Court wants to give to the petitioner that will cause some harm to the mental status of the detenu and therefore, even for that arrangement, the third respondent is not agreeing.

8. We have considered the aforesaid statement made by the respective parties and heard the learned counsel for the parties.



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9. Insofar as the detenu is concerned, who is with the third respondent, who is none other than his father, therefore, we cannot take it as an illegal custody and it cannot be treated as an abduction also. Since he is the natural guardian, if the child is with him and that too after the alleged relinquishment made by the petitioner due to the physiological change noted by her in the anatomy of the petitioner, it cannot be stated as an illegal custody. Therefore, for that reason alone, this Habeas Corpus Petition is liable to be rejected. However, if the petitioner wants to have visitation right that can be permitted by the third respondent. Therefore, in this context, we feel that the petitioner atleast shall be permitted to see the child once in a week preferably, in the weekend, ie., Saturdays and Sundays between 10.00 a.m. and 1.00 p.m. at a common place, preferably at Rajaji Children Park near Gandhi Museum, Madurai 625 020, where the third respondent can bring the child and it is open to the petitioner to see the child between 10 and 1.00 p.m. and thereafter, the third respondent can take back the child. This arrangement of visitation of the child by the petitioner can continue till a permanent arrangement is made in any appropriate application or petition to be filed in this regard by the petitioner before appropriate forum in the manner known to law.



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10. This interim arrangement of visitation right has been made by this Court only in order to meet out the current situation as the petitioner mother wants to see the detenu atleast once in a week. The aforesaid arrangement shall not influence the Court below, while deciding any application to be filed by the petitioner seeking custody of the child. If any such application is filed by the petitioner, the same shall be decided independently on its own merits and in accordance with law.

With these observation and directions, this petition is closed.

(R.S.K.,J.) (K.K.R.K.,J.)
18.04.2023

Index : Yes/No
Internet : Yes
RR



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- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
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