



HCP(MD)No.413 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.04.2023

CORAM

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

H.C.P.(MD)No.413 of 2023

Gurumoorthi

.. Petitioner

Vs.

- 1.The State represented by
The Superintendent of Police,
Virudhunagar District
- 2.The Inspector of Police,
Rajapalayam Sub Division,
Rajapalayam, Virudhunagar District
- 3.The Inspector of Police,
AWPS Police Station,
Rajapalayam, Virudhunagar District.
- 4.Ganesan Chetiyar
- 5.Manjula

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents 1 to 3 to produce the body or detainee namely Gomathi (female child) aged about 5 years,



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D/o.Gurumoorthi before this Court and handover her custody to the petitioner.

For Petitioner : Mr.N.Balasubramanian
For Respondents : Mr.RMS.Sethuraman for R1
to R3
Additional Public Prosecutor
Mr.K.P.Narayanakumar for
R4&5

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 to 3 to produce the body or detainee namely Gomathi (female child) aged about 5 years, D/o.Gurumoorthi before this Court and handover her custody to the petitioner.

2. Pursuant to the notice ordered by this Court, the third respondent has produced the detainee, namely, Gomathi, aged 5 years and the child was brought by the 4th and 5th respondents.



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3.The 5th respondent has stated that the detenue has already been admitted in first standard in a school at Trichy and the 4th and 5th respondents being the grandparents of the detenue, who would take care of her for the present and they want to continuously take care of the said detenue.

4.Insofar as the petitioner is concerned, with regard to the suspicious death of the deceased,ie., the wife of the petitioner, Revenue Divisional Officer's enquiry has been conducted under Section 174(3) Cr.P.C. and a report dated 30.09.2022 was filed. The said report has also been produced before this Court. On perusal of the report, we found that some serious allegations have been made by the 4th and 5th respondents at the time of RDO enquiry against the petitioner. Therefore, based on such allegations, even though the RDO has made a clean chit against the petitioner, the respondent police by altering the case from 174 Cr.P.C. to investigate the matter and only after investigation, they may come to the conclusion that whether the petitioner is to be charged or otherwise.

5. Therefore, in this context, the learned Additional Public Prosecutor



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submits that in that direction, action would be taken by the respondent police by altering the FIR and after completing the investigation, if any offence is made out against the petitioner, suitable action would be taken against him.

6. In view of the said position, as of now, the petitioner has to face such an investigation/enquiry at the hands of the respondent police on the basis of the allegations that have been made by the 4th and 5th respondents, which have been recorded in the report dated 30.09.2022 and hence, at present, the plea raised by the petitioner in this petition to produce the detenue and hand over her to him does not arise.

7. Further, it is to be noted that a Guardian and Wards Petition in G.W.O.P.No.681/2022 had been filed by the 4th and 5th respondents before the family Court, Trichy, where the enquiry is pending and the next hearing date is fixed on 28.06.2023. However, this fact has been suppressed by the petitioner in this petition.

8. However, the learned counsel for the petitioner submits that this



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fact is not known to the petitioner. Be that as it may, GWOP since has been filed where the issue as to the custody of the child would be decided by the concerned Court, where if at all any plea is to be raised by the petitioner to have the visitation right over the detinue, it can be pleaded by filing appropriate application.

9. In view of the afore-stated, by recording the said development, we feel that the detinue is not in the illegal custody at the hands of the 4th and 5th respondents, who are the maternal grandparents of the detinue, in whose custody as of now, the detinue is safely placed. Therefore, till a decision is taken by the family Court in the pending GWOP as stated supra, the continuous custody of the detinue shall be with the 4th and 5th respondents.

10. In view of the above observation and direction, this petition is closed.

(R.S.K.,J.) (K.K.R.K.,J.)
27.04.2023

Index : Yes/No
Internet : Yes
RR



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To

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



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and
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