



H.C.P.(MD) No.706 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Sathiya Jeeva

... Petitioner / Mother of the detenues

Vs.

1.The Superintendent of Police,
Pudhukottai District.

2.The Inspector of Police,
Kaaraiyur Police Station,
Pudhukottai District.

3.Pokkusamy

... Respondents

PRAYER: 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 or person of the detainee by name S.Sabareeswaran (age 6) S/o.Sundarraaj and S.Yuvaraj (age 5) S/o.Sundarraaj, who were the sons of the petitioner herein before this Court and hand over their custody to the petitioner.



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For Petitioner : Mr.M.Krishna Sreethar
For R1 & R2 : Mr.RMS.Sethuraman
Additional Public Prosecutor
For R3 : Mr.C.Bharathi

ORDER

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

The petitioner, seeking production of her sons, namely, S.Sabareeswaran, aged about 6 years and S.Yuvaraj, aged about 5 years, has filed this Habeas Corpus Petition.

2.Today, when the matter is taken up for hearing, the respondent Police has produced the detenues children along with grandparents ie., the 3rd respondent and his wife.

3.The learned counsel for the 3rd respondent has submitted that the father of the children, who is the son of the 3rd respondent, committed suicide for the alleged reason of strained relationship between the couples and even prior to that and especially, after the demise of the father of the



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detenues, the children have been continuously at the custody of the grandparents ie., the 3rd respondent and his wife.

4.However, the learned counsel for the petitioner has submitted that the petitioner even is denied right of visiting the children by the grandparents of the children. Therefore, at least that right can be given to her till a final decision is taken by the Court concerned, where the petitioner is having a plan to approach the Court concerned to get the custody of the children.

5.It has been opposed by the learned counsel for the 3rd respondent on the ground that the petitioner already performed second marriage and she will not take care of the children. Therefore, for the best interest of the children, they must be with the grandparents, as they are the only legal heirs through the only son of the parents, he contended.

6.We have also heard the learned Additional Public Prosecutor for the respondents 1 and 2, who has submitted that the children for more than a year are safely placed at the disposal of the grandparents and they have also come before this Court along with the children.



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7.We have considered the said rival submissions made by the learned counsel for the parties.

8.Since the children have been with the grandparents as the petitioner has left the matrimonial home and the father of the children also died by committing suicide, therefore, naturally, the children have to be taken care of only by the person like grandparents and they have taken care of the children. Therefore, it cannot be stated that the children are in illegal custody at the hands of the grandparents including the 3rd respondent.

9.Let the children be continued to stay with the grandparents for the time being.

10.However, it is open to the petitioner to approach the appropriate Court of law, seeking custody of the children in the manner known to law.



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11.In the meanwhile, since the visitation right is sought for by the petitioner, we feel that such a visitation right on the children can be given to the petitioner, under which the petitioner can visit the matrimonial home of the petitioner ie., the erstwhile husband's residence, where the grandparents and the children are residing at Paalappatti Village, Nerinjikudi Post, Ponnamaravathi, Pudukkottai District every Sunday between 10.00 a.m., and 05.00 p.m.. When such a visit is made by the petitioner, the grandparents of the children must co-operate for having the access with the children by the petitioner without any commotion. This arrangement can continue till a permanent solution is made by the Court of law, in case the petitioner approaches such Court of law under the personal law remedies as indicated above.

12.With the above direction, this Habeas Corpus Petition is closed.

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

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.
MYR

To

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

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