



HCP(MD)No.951 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.08.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.951 of 2023

Hayagrivan

.. Petitioner

Vs.

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

2.The Inspector of Police,
All Women Police Station,
Ambasamuthiram Police Station,
Tirunelveli District.

3.Parvathi

4.Boothpandi

5.Arunachalam,

.. Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the respondents No.1 and 2 to produce the body or person of the petitioner's daughter namely Govarthini Naachiyar aged about 2 1/2 years old before this Court and hand over her custody to the petitioner.



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For Petitioner : Mr.D.S.Haroon Rasheed for
Mr.S.Sathya Chidambaram

For Respondents : Mr.RMS.Sethuraman

Additional Public Prosecutor
for R1 & R2
Mr.N.Vignesh for R3 to R5

ORDER

(Order of the Court was made by M.S.RAMESH, J.)

The petitioner is the father of Govarthini Naachiyar, aged about 2½ years. Owing to certain matrimonial disputes with his wife, who is the 5th respondent herein, he had filed an application under Section 7 of the Guardian and Wards Act, 1890 seeking for permanent custody of the child.

2. Through an order dated 07.06.2023. the petitioner's wife and his in-laws were set exparte and while rejecting the prayer for permanent custody, the Family Court, Madurai, had granted interim custody of the child to the petitioner herein. On the date when the order was passed, the petitioner herein had appeared before the family Court, Madurai, with his minor child, which fact has been recorded by the Court below.



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3. It is now the case of the petitioner that on 23.06.2023, his wife along with his in-laws had forcibly taken his child to some unknown destination. In view of the order granting interim custody of the child, he claims that such a custody with his wife/in-laws is illegal and therefore, sought for issuance of a writ of Habeas Corpus.

4. We have perused the order passed by the family Court in G.W.O.P.No.1164/2023 dated 07.06.2023. The family Court had recorded the statement of the petitioner herein, who was present along with his child and was granted interim custody of the child, till she attains her majority. If at all the wife of the petitioner is aggrieved against such an order, the option available to her would be to approach the concerned Court for vacating the interim order. If the averments made in the affidavit is taken at its face value, the incident on 23.06.2023, whereby the child was taken away by his wife may amount to violation of the Court orders and therefore, the petitioner would be entitled to have the custody of the child in view of the family Court order.



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5. We have not expressed any of our views with regard to the validity of the order passed by the family Court. Suffice it to say that if the petitioner's wife seeks for custody of the child, it is always open to her to approach the family Court.

6. Today, the second respondent police had produced the child, which was accompanied by her mother/petitioner's wife. We had interacted with the petitioner's wife, who had stated that she was not aware of the Court orders. She also stated that she would hand over the child to the petitioner herein and also live with him till she works out her remedy before the concerned family Court with regard to the issue of custody.

7. In view of such a statement, the custody of minor Govarthini Naachiyar is hereby restored back to the petitioner herein. The petitioner's wife/5th respondent is at liberty to live with the petitioner at his residence. While living with him, she would also be entitled to shower all her love and affection to her child to which the petitioner shall not object. At this juncture, the learned counsel for the 5th respondent submitted that they have already filed an application seeking to set aside the exparte order. If such



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application is numbered and listed before the family Court, the family Court shall endeavour and dispose it on its own merits and pass appropriate orders as expeditiously as possible, uninfluenced by any of the observations made in this order.

8. With the above observations and findings, this Habeas Corpus Petition is closed.

(M.S.R.,J.) (M.N.K.,J.)
01.08.2023

NCC :Yes / No
Internet : Yes

RR

To

1.The Family Court,
Madurai.

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

3.The Inspector of Police,
All Women Police Station,
Ambasamuthiram Police Station,
Tirunelveli District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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and
M.NIRMAL KUMAR,J.

RR

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