



HCP(MD)No.1043 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.09.2023

CORAM

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

H.C.P.(MD)No.1043 of 2023

Subbulakshmi

.. Petitioner / Mother of
the Detenu

Vs.

- 1.The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli District.
- 2.The Assistant Commissioner of Police,
Office of the Assistant Commissioner of Police,
Tirunelveli District.
- 3.The Inspector of Police,
All Women Police Station,
Palayamkottai.
- 4.Murugan.

.. Respondents

PRAYER: 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 person or body of the petitioner's child namely Biramha Sakthi, D/o.Siva Selvan five years old child and handed over the custody to the petitioner.



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HCP(MD)No.1043 of 2023

For Petitioner : Mr.R.Senthil Kumar

For Respondents : Mr.RMS.Sethuraman
Addl. Public Prosecutor for R1 to R3
M/s.C.R.Ponnuthai for R4

ORDER

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

The petitioner is the mother of Biramha Sakthi, who was born on 17.11.2018 and now aged about 4 ½ years. The petitioner's husband Ponperumal is alleged to have committed suicide on 25.03.2023. The death of the petitioner's husband has been registered in F.I.R.No.212 of 2023, before the Palayamkottai Police Station and the enquiry under Section 174 Cr.P.C. is pending. According to the learned Additional Public Prosecutor, the postmortem certificate, since is awaited, the final report is yet to be filed. At the time of death of her husband, her son was in the petitioner's care and custody. It is stated by the petitioner that on 22.04.2023, when the fourth respondent herein, who is father-in-law of the petitioner, had come to see the petitioner's son he had forcibly taken the boy with him. All her efforts to retrieve her son in vain, which prompted to her given a complaint



HCP(MD)No.1043 of 2023

on 07.08.2023 and the same was registered in C.S.R.No.243 of 2023.

Since, the said complaint was not acted upon, the present Habeas Corpus Petition has been filed.

2. Pending the Habeas Corpus Petition, we had directed the third respondent to file a status report and accordingly, the matter was adjourned.

3. Today, when the matter was called, the fourth respondent along with his wife Santhi and the petitioner's son Biramha Sakthi are present before us. While the learned counsel for the petitioner submitted that the petitioner is the legal guardian of her son, the custody of the boy with her in-laws is illegal, the learned counsel appearing for the fourth respondent would submit that there is a suspicion in the death of the petitioner's husband and therefore, the custody of the boy should not be with her.

4. We have given our anxious consideration to the submissions made by both sides.



HCP(MD)No.1043 of 2023

5. As per the F.I.R.No.212 of 2023, registered under Section 174 Cr.P.C., it is alleged therein that the petitioner's husband was an alcoholic, who had earlier attempted to commit suicide by drinking varnish, 20 days prior to the date of his death for which, the petitioner had admitted him in a private hospital and extended the medical assistance. It is also stated that on the date of occurrence, the petitioner's house was locked from inside and thinking that her husband is in a drunken state and therefore refusing to open the door, she had left the house. Thereafter, when the door was remained locked for quite some time, she had brought her brother and entered into house and then found that her husband had committed suicide by hanging. The enquiry in this regard is pending. Apart from stating that there is a suspicion in the death of his son, the fourth respondent herein has not questioned the mental and legal status of the petitioner to have custody of her son.

6. It is pertinent to point out here that the petitioner, being the mother of Biramha Sakthi, aged about 4 ½ years, would be the legal guardian, as well as custodian of her son, qua her in-laws. When this being the case, the



HCP(MD)No.1043 of 2023

refusal on the part of the fourth respondent to part with the custody of the petitioner's son would be unlawful and thus, this Court exercising its power under Article 226 of the Constitution of India would be justified in issuing a writ of Habeas Corpus to secure the petitioner's son and restore the custody to her.

7. Accordingly, a writ of Habeas Corpus is hereby issued for securing and handing over the custody of the minor boy Biramha Sakthi to the petitioner, who is the mother. The boy, who was physically brought to this Court by the fourth respondent and his wife, had also handed over the custody of the boy to the petitioner. The petitioner is now living with her parents, who are also present before us. According to them, the petitioner's father is engaged in the profession of painting and is also willing to take care of both the petitioner, as well as his grandson.

8. The learned counsel for the petitioner apprehends that some harm may be caused to the petitioner and her son after the order is passed in this regard and hence, the third respondent herein, who is present before this



HCP(MD)No.1043 of 2023

Court, is directed to extend the necessary protection to ensure that the petitioner and her son are safe till they reach their residence. We would hasten to add here that since the fourth respondent and his wife are also the grandparents of the petitioner's son, they would be entitled to visit their grandson. In this regard, whenever, such a visit is made by them to meet their grandson, neither the petitioner nor her parents shall object to such visitation.

9. Accordingly, the Habeas Corpus Petition stands allowed.

(M.S.R.,J.)

(M.N.K.,J.)

04.09.2023

NCC : Yes
Index : Yes
vsm



HCP(MD)No.1043 of 2023

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