



HCP.No.516 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM

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

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.516 of 2024

Swapna Raj

.. Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,

2.The Inspector of Police,
S-1 St. Thomas Mount Police Station,
Railway Station Road, Alandur,
Chennai-600 016.

3.R.Rajkumar

(R3 *suo motu* impleaded as per order
dated 12.03.2024 in HCP.No.516 of 2024)

.. Respondents



HCP.No.516 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to direct the respondent police to produce the petitioner's minor children viz., Abinav Kumar and Pranaav Kumar (Special Child) both are aged 9 years and produce them before this Court and handover to the custody of the petitioner.

For Petitioner : M.Kempuraj

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind for R1 and R2

Mr.S.Rajasekar for R3

ORDER

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

The petitioner herein is the wife of the third respondent. The couple have twin children namely Abinav Kumar and Pranaav Kumar, both aged about 19 years. Owing to certain matrimonial dispute, the petitioner and the third respondent herein are estranged and living separately.



HCP.No.516 of 2024

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2. It is the case of the petitioner that on 22.02.2024, her husband had taken the children into his custody and kept them in some undisclosed place. Since she was unable to trace her children, she gave an online complaint to the police. Since there was no sufficient progress in the investigation, she has filed the present Habeas Corpus Petition.

3. The learned counsel for the petitioner submitted that both minor children had been illegally taken up the third respondent herein and one of them was a special needs child, who requires extra care and attention. Therefore, the custody of the children with her would be conducive. She also made various allegations against the third respondent herein as well as her in- laws. Similarly, the third respondent accused the petitioner with several allegations and claimed that the care and custody of the minor children would be more conducive if it is with their father and grandparents.

4. When it was brought to our notice that after the custody of the



HCP.No.516 of 2024

children was taken by the third respondent herein, the children had stopped going to Indian Public School at Perungudi, we did not appreciate the disruption in the children's education, which led to the passing of the following interim order in H.C.P.No.516 of 2024 dated 19.03.2024:

"(1) The 3rd respondent shall forthwith facilitate his two minor children to continue attending their School from tomorrow, i.e., 20.03.2024. The 3rd respondent shall also have custody of both the children during the weekdays, i.e., from Monday to Friday.

(2) The petitioner herein shall not cause any disturbance or other hindrances to the children, while they attend the School.

(3) The petitioner would be at liberty to have interim custody of her children from 09.00 A.M. of every Saturday till 08.00 P.M. of the following Sunday at her residence situated at VGN Fairmont, 78, Parthasarathy Koil Street, Arulayiammanpet, Thiru Vi Ka Industrial Estate, Guindy, Chennai – 600 032. During such custody with her, the petitioner is at liberty to take the



WEB COPY



HCP.No.516 of 2024

children to any public places, entertainment centres, etc.

(4) While the minor children are in the interim custody of their mother/the petitioner herein, the 3rd respondent shall not cause any hindrance or obstruction to the petitioner or in any other way deprive her to have the care and protection of her children.

(5) The 3rd respondent shall also ensure that one among the children, namely Pranaav Kumar, who is a Special Child, shall be provided with special classes or any other special coaching that was being extended to him, prior to the dispute between the petitioner and the 3rd respondent.

(6) Apart from the aforesaid arrangements, the petitioner would be at liberty to have the custody of both the children from 04.30 P.M. of 26.03.2024, on which day the birthday of the children falls. She is also at liberty to celebrate their birthday at a public place, during which celebrations, the 3rd respondent and his close family relatives may attend the celebrations, to



*which the petitioner shall not cause any obstruction.
After the celebrations, the custody of the children shall
be handed over to the 3rd respondent.*

*(7) The 2nd respondent/Inspector of Police, shall
closely monitor the interim arrangements made in the
present order, till the next date of hearing."*

5. Pursuant to the interim orders, both the parties have complied with the same. Apart from the children continuing their education, the petitioner as well as the third respondent herein also benefit from the aforesaid interim arrangement.

6. It is also brought to our attention that owing to the matrimonial dispute, divorce petitions have been preferred before the concerned family Court, as well as a petition for the appointment of guardianship under the Guardians and Wards Act in G.W.O.P.No.203 of 2024, which is still pending.



HCP.No.516 of 2024

WEB COPY

7. In view of the interim orders that have been made and also the fact that the ordinary custody of the children with their father cannot be termed to be illegal, we do not intend to pass any further orders touching upon the prayer sought in the present petition.

8. Since this is not a case of illegal custody and that the parties have subjected themselves to legal proceedings for appointment of guardianship, they are also open for them to seek appropriate orders regarding custody and guardianship. Therefore, the parties are granted liberty to workout such remedies in the pending proceedings or through any other petitions they choose to file at a later stage.

9. Pending Guardianship Petition in G.W.O.P.No.203 of 2024 before this Court (Original Side), the interim arrangement made by this Court in its interim order dated 19.03.2024, insofar as it relates to interim custody of the children shall be continued. The concerned Court dealing with the GWOP



HCP.No.516 of 2024

shall adjudicate the proceedings, without being influenced from any of the observations made in this order. While passing any orders relating to custody of the minor children, the concerned Court would be at liberty to make any arrangements which deems fit and proper, without reference to the interim arrangement for custody of the children made by this Court in its order.

10. The present Habeas Corpus Petition stands closed accordingly.

(M.S.R.,J.) (S.M.,J.)
06.06.2024

NCC : Yes / No
Index : Yes / No
Anu

To

1.The Commissioner of Police,
Greater Chennai,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,

2.The Inspector of Police,
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HCP.No.516 of 2024

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3.The Public Prosecutor,
Madras High Court



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HCP.No.516 of 2024

M.S.RAMESH,J.
and
SUNDER MOHAN,J.

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H.C.P.No.516 of 2024

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