



WEB COPY



HCP.No.767 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.767 of 2024

Iyswarya Devi

... Petitioner

Vs.

1.The Additional Secretary to Government,
Public (RH-II) Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Commissionerate Office,
EVK Sampath Salai,
Vepery, Chennai – 600 007.

3.The Deputy Commissioner of Police,
Office of Deputy Commissioner of Police,
T.Nagar, Chennai – 600 017.

4.Inspector of Police,
W-24, All Women Police Station,
Teynampet, Chennai – 600 006.

5.Dr.Kaleswara Rao

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the 4th respondent to produce body of the petitioner's daughter namely Takshara Basvani, aged 5½ years before this Court and hand over to the petitioner.

For Petitioner	: Mr.D.Thirumoorthy
For R1 to R4	: Mr.E.Raj Thilak, Additional Public Prosecutor assisted by Mr.C. Aravind
For R5	: Ms.G.Sasikannan

ORDER

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

Complaining that the fifth respondent herein/husband of the petitioner, has taken forceful possession of her daughter aged about 5½ years and is refusing to handover the custody of the child to the petitioner, the present Habeas Corpus Petition has been filed.

2. According to the petitioner, the fifth respondent is employed in Russia, where both of them had some matrimonial disputes between them.



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When the fifth respondent had booked flight for the petitioner and her daughter to come back to Chennai on 29.11.2023, it is claimed that her husband convinced the petitioner to leave the child with him and that he would bring back the child to India in two weeks. However, he did not handover the child to the petitioner. In this connection, the petitioner had also given a complaint on 01.02.2024 before the third respondent/Deputy Commissioner of Police, which was forwarded to the fourth respondent herein.

3. The girl child is aged about 5½ years and by taking note of her tender age, we are of the view that ordinary custody of the child should be with the mother. Accordingly, we had directed the fifth respondent to produce the petitioner's daughter before us. On 06.06.2024, when the child was produced, we handed over the custody of the child to the petitioner/mother and had also referred both the parties to the Mediation and Conciliation Centre.

4. It is stated by the learned counsel for the petitioner that though an arrangement for visitation of the child by the fifth respondent/father was



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arrived at, the fifth respondent had refused to sign such an agreement.

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5. When the mediation proceedings have failed and that the child has also been restored to the petitioner/mother, which in our view would be in the best interest of the child and due to tender age, we deem it appropriate to continue the custody of the child with the petitioner/mother.

6. At this juncture, the learned counsel for the fifth respondent submitted that the fifth respondent has filed a petition in H.M.O.P.No.51 of 2024 and the same is pending.

7. In view of the above, this Habeas Corpus Petition stands closed. Further, it is always open to both the parties to work out their remedies with regard to the matrimonial dispute, as well as visitation/custodial rights of the child before the appropriate Family Court.

[M.S.R., J] [S.M., J]

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Index: Yes/No

Speaking/Non-speaking order

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- 5.The Public Prosecutor,
High Court, Madras.



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