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H.C.P.No.799 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.799 of 2024

Dr.S.Hariharan

...Petitioner

Vs.

1.The Deputy Superintendent of Police,
Deputy Superintendent of Police Office,
Denkanikottai Road, Dinnur,
Hosur – 635 109.

2.The Sub-Inspector of Police,
Bagalur Police Station,
Hosur Taluk,
Krishnagiri District – 635 103.

3.C.S.Vijaykumar

4.V.Kumar

5.Divyajothi

6.C.V.Vinay Kumar

...Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, directing the respondents to produce the body and person of the



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petitioner's minor child, by name H.Ganishka, aged about three years, before this Court and to hand over the girl child to the Father/Sole Guardian, i.e., the petitioner herein.

For Petitioner : Mr.M.Ravi

For R1 & R2 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For R3 to R6 : Mr.N.G.R.Prasad
for M/s.Row & Reddy

ORDER

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

Heard Mr.M.Ravi, learned counsel for the petitioner, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, for the respondents 1 and 2 and Mr.N.G.R.Prasad, learned counsel for the respondents 3 to 6.

2. While the petitioner herein is the father of baby H.Ganishka, aged about 3 years, the 3rd respondent herein is her grandfather. The respondents 4 to 6 are the close relatives of the minor child. The petitioner got married to one C.V.Bhavya Jothi on 28.02.2020 and the minor girl was born to them on 21.11.2020. On 17.06.2022, the



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petitioner's wife is said to have committed suicide by hanging. On the next day, while the petitioner was in the funeral of his wife, he alleges that his child was detained by the 3rd respondent herein. The petitioner's complaint to the All Women Police Station on 16.03.2024 was taken up in C.S.R.No.74/2024. Thereafter, since there was no effective action on his complaint, he has filed the present Writ Petition.

3. The petitioner's minor child is now under the care and custody of the respondents 3 and 5 at Bengaluru. Pending the Writ Petition, we had taken into account that as a father of the minor child, the petitioner would have legal entitlement to visit his child and accordingly, an interim order came to be passed on 07.06.2024, with the following directions:-

“4. Accordingly, the petitioner and his parents are permitted to visit the minor child, who is said to be under the care and custody of the respondents 3 and 5, at a common place in Bangalore, which shall be at Phoenix Mall of Asia, Yelahanka, between 2.00 p.m. to 5.00 pm., on 15.06.2024 as an interim measure. It is made clear that respondents 3 to 6 shall not cause any obstruction or other kind of inconvenience when the petitioner visits his child.”



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4. Today, when the matter was called, the learned counsel for the petitioner submitted that the petitioner, being a father of the child, is the natural guardian in the absence of his mother and therefore, he is entitled for the legal custody of his child.

5. However, the learned counsel appearing on behalf of the private respondents would submit that, right from the death of the petitioner's wife, the child has all along been under the care and custody of the respondents 3 and 5 and therefore, handing over custody of the child to the petitioner will not be appropriate. He further submitted that they have no objection, if the petitioner continues to visit his minor child, as per the arrangements made by this Court, through its order dated 07.06.2024.

6. It is no doubt true that under Section 6 of the Hindu Minority and Guardianship Act, the father would be a natural guardian of his minor child, since the mother of the child had passed away. However, we have taken into consideration that the child is of a tender age of 3 years and she has been separated from her father when she was just about 1½ years. After that, she has been under the care and custody of her



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grandparents for the past two years. At this stage, if the child is to be separated from the custody of her grandparents, the same may be of psychological disturbance to the child. Hence, by taking into account the welfare of the child, we deem it appropriate that as a temporary measure, the custody of the child can be continued with the grandparents at Bengaluru.

7. However, we hasten to add here that the father is the natural guardian of the minor child and therefore, he would be entitled for visiting his child, as per the arrangements made in the earlier interim order dated 07.06.2024. So also, whenever the petitioner intends to see his minor child, it will always be open to him to contact the 3rd respondent herein for visiting his child and during such occasions, the 3rd respondent shall oblige to such request for visitation. In case, the petitioner intends to seek for permanent custody of the child, liberty is hereby granted to him to make out an appropriate application under the provisions of the Hindu Minority and Guardianship Act, seeking for such custodial rights. When the petitioner files such application, the concerned Court of law shall adjudicate the petition on its own merits and pass appropriate orders in accordance with law, without being influenced by



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any of the observations made in this order, with regard to the rights of the parties or the interim arrangement for visitation and the Court shall be at liberty to pass any orders, even if required to deviate from the present arrangement made in this order.

8. With the above liberty and the interim arrangement for visitation, pending final adjudication of the rights of the parties over the custody of the minor child, no further orders are required in the present Habeas Corpus Petition. Accordingly, the same stands disposed of.

[M.S.R., J] [S.M., J]
20.06.2024

Index:Yes/No
Speaking order/Non-speaking order
hvk



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