



WEB COPY



HCP.No.1738 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

H.C.P.No.1738 of 2024

Priya

... Petitioner

Vs.

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

2.The Sub-Inspector of Police,
AWPS-Kanchipuram,
Kanchipuram District.
(Crime No.360 of 2024)

3.Karthik

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondent to produce the detinue Minor Milira aged about 3 years, before this Court and set her at liberty and hand over the Custody of child to his mother and pass such further or other order as this Court may deem fit and proper in the circumstances of the case and thus render justice.



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For Petitioner : Mr.S.Gopinath
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

The Writ of Habeas Corpus has been instituted to direct the respondent to produce the detainee Minor Milira aged about 3 years, before this Court and set her at liberty and hand over the Custody of child to his mother.

2.Admittedly, matrimonial dispute exist between the petitioner and the 3rd respondent. Petitioner is the wife of the 3rd respondent. From and out of their wedlock, a girl child namely Minor Milira was born. Since the 3rd respondent had forcibly taken away the minor child, the Habeas Corpus Petition came to be instituted. The child was produced by the police authorities. Since the minor child is aged about 3 years, the Court thought it fit that the child must be under the custody of the mother until the age of 5 years and therefore, the child was handed over to the petitioner/mother vide order dated 29.07.2024. Accordingly, the minor child is in the custody of the petitioner.



3.The learned counsel for the 3rd respondent raised several allegations against the petitioner and about her conduct. Such allegations cannot be adjudicated in a Habeas Corpus Petition. Disputed facts ought to be adjudicated before the competent form based on the documents and evidence on record, including the oral evidence. The interest of the child below 5 years alone is to be taken into consideration by this Court. Since the child is 3 years, she was handed over to her mother. That being the factum, no further adjudication needed in respect of the allegations raised between the parties.

4.Section 6 in The Hindu Minority And Guardianship Act, 1956 narrates the guardianship of the minor child, which reads as follows,

“The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—

(a)in the case of a boy or an unmarried girl—the father; and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;”



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5. That being the factum, the minor child namely Milira aged about 3 years has been rightly under the custody of the petitioner/mother.

6. It is made clear that till the age of 5 years, the child must be under the custody of the mother and thereafter, best interest of the child will be taken into consideration.

7. The parties are at liberty to resolve their matrimonial dispute in the manner known to law. Since no illegal detention exist, the Habeas Corpus Petition stands disposed of.

[S.M.S., J.]

[R.S.V., J.]

23.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
gd



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