



WEB COPY



H.C.P.No.2395 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.2395 of 2023

Kavitha Pambi

.. Petitioner

Vs

1. The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi 110 001.
2. The Secretary,
Foreign Affairs,
Ministry of Foreign Affairs,
Government of India, New Delhi 110 001.
3. The Foreigners Registration Officer (FRRO),
Lok Naik Bhavan, New Delhi 110 001.
4. The Commissioner of Police,
Greater Chennai City Police Commissioner's
Office, E.V.R.Periyar Salai,
Chennai 600 007.



H.C.P.No.2395 of 2023

WEB COPY

5. The Assistant Commissioner of Police,
Bharathi Salai, Ramapuram,
Chennai 600 089.

6. The Inspector of Police,
R9-Valasaravakkam Police Station,
Seenikuppam Road,
Valasaravakkam, Chennai 600 087.

7. Senthil Manalan

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus to direct the 6th respondent to produce the corpus or body of the detenus (petitioner's children) Adhithi & Aditya aged 14 years and 12 years respectively before this Court who are in the custody of the 7th respondent and hand over the custody of them to the petitioner, so that the children can be taken to the United States of America where they were living and studying in school.

For the Appellant : Mr.E.Chandrasekaran

For the Respondents : Mr.T.L.Thirumalasamy
CGSC for RR 1 to 3

: Mr.E.Raj Thilak
Addl. Public Prosecutor
for RR 4 to 6

: Mr.B.Janakiram for R-7

* * * * *



WEB COPY



H.C.P.No.2395 of 2023

ORDER

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

The lis on hand is a habeas corpus petition seeking direction to the sixth respondent to produce the corpus or body of detenus, Adhithi aged 14 years and Aditya aged 12 years respectively.

2. The learned counsel for the petitioner Mr.Chandrasekaran would mainly contend that the minor children aged about 14 years and 12 years are under the illegal custody of the seventh respondent, who is the then husband of the petitioner. The petitioner and the seventh respondent married at Tirupathi, State of Andhra Pradesh on 01.09.2008 and their marriage was registered on the file of Sub Registrar at Valasaravakkam, Chennai. From and out of wedlock, two children born, one female and male. The daughter is now aged about 15 years, studying 9th standard. The son is aged about 13 ½ years, studying 8th standard. Both are studying in a CBSE school at



H.C.P.No.2395 of 2023

WEB COPY

Chennai and are under the custody of the seventh respondent who is none other than the father of the two children.

3. The learned counsel for the petitioner would submit that the marriage between the petitioner and the seventh respondent was dissolved by the Court in the United States of America-Texas. The Court made an observation that the primary residence of the children shall within the State of Texas until such time as Senthil Manalan's criminal appeal under Cause No.14-17-00088-CR, currently pending before the Fourteenth Court of Appeals is rendered on and thereafter within the United States of America, and the parties shall not remove the children from out of the State of Texas.

4. Relying on the said order, the learned counsel for the petitioner would submit that the seventh respondent had forcibly taken away the children from Texas to India and therefore, it is to be construed as an illegal detention. The seventh respondent, as per the petitioner, had taken the children forcibly in April 2023.



H.C.P.No.2395 of 2023

WEB COPY

5. The learned counsel for the seventh respondent, Mr. Janakiram, would oppose by stating that no appeal is pending before the Court at United States of America. The seventh respondent has not been convicted and the punishment was waived-off. He has not forcibly taken away the children, but the children willingly accompanied the seventh respondent and are now staying along with him at Chennai wherein the paternal grand parents are taking care of the children.

6. For the limited purpose of deciding the habeas corpus petition, we have examined the children, namely Adhithi and Aditya. Adhithi, aged about 15 years and Aditya, aged about 13 ½ years, are bright students and they say they are the toppers in the school at Chennai. They continue to be the toppers and are feeling happy, both in the school as well as at the residence. They are being taken care of by their father/seventh respondent and grand parents who are residing with them at Valasaravakkam, Chennai. Both the children, while raising certain allegations against their mother,



H.C.P.No.2395 of 2023

WEB COPY

express their consent to live along with their father and the paternal grand parents. Their expressions are spontaneous and despite no questions raised by this Court, they have said that they are not willing to join with their mother. They are not even ready to see their mother, who is also present before this Court. When the children, with clear mind, express their wishes to stay along with their father and paternal grand parents, this Court is bound to consider the wishes and best interest of the children.

7. The best interest of the children cannot be considered only in the view point of the Court alone. The best interest involves the participation of the children and their right to take certain decisions. Court has to assess whether they are capable of understanding what is good and bad. If such understanding is expressly identifiable, then the best interest of the children is to be considered based on the likes and dislikes and the choices of the children, as the right of the children is globally recognised.

8. In primitive days, children were considered as commodities, but



H.C.P.No.2395 of 2023

WEB COPY

now the children's right is of paramount importance. Violation of child's right is a serious issue in the current scenario and Courts are bound to respect and honour the right of the child including his/her right to live. Therefore, the best interest of the children is not the view point and perspective of the Courts. Judges may have their own view point in respect of the children and the manner in which they should be brought up. However, such ideas of the Courts cannot have any implication while deciding the cases of this nature. The wishes and best interest of the children, their emotions, feelings and their capacity to take decisions, all to be considered together for the purpose of considering the best interest of the children.

9. In the present case, the minor girl, Adhithi, aged about 15 years studying in 9th standard and the minor boy, Aditya, aged about 13 ½ years are capable of expressing their views freely and firmly. Therefore, the Court cannot brush aside their feelings, emotions, ideas and wishes. Since the children wholeheartedly state that they are willing to live with their father/seventh respondent along with their paternal grand parents at Chennai



H.C.P.No.2395 of 2023

WEB COPY

and they are pursuing education at Chennai for the past about 2 ½ years, we are not inclined to cause any dislocation to the children which would result in prejudice to the interest of the children.

10. More so, the minor children are not under illegal detention. Thus, we are not inclined to consider the present habeas corpus petition since the petitioner has failed to establish any illegal detention. Therefore, the habeas corpus petition is dismissed. The petitioner is at liberty to move the competent Court, if she is so advised, for seeking visitation right.

(S.M.S., J.) (V.S.G., J.)
27.08.2024

Index : Yes
NC : Yes

sra



H.C.P.No.2395 of 2023

WEB COPY

To

1. The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi 110 001.
2. The Secretary,
Foreign Affairs,
Ministry of Foreign Affairs,
Government of India, New Delhi 110 001.
3. The Foreigners Registration Officer (FRRO),
Lok Naik Bhavan, New Delhi 110 001.
4. The Commissioner of Police,
Greater Chennai City Police Commissioner's
Office, E.V.R.Periyar Salai,
Chennai 600 007.
5. The Assistant Commissioner of Police,
Bharathi Salai, Ramapuram,
Chennai 600 089.
6. The Inspector of Police,
R9-Valasaravakkam Police Station,
Seenikuppam Road,
Valasaravakkam, Chennai 600 087.
7. The Public Prosecutor
Madras High Court, Chennai.



WEB COPY



H.C.P.No.2395 of 2023

S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

(sra)

H.C.P.No.2395 of 2023

27.08.2024