



HCP.No.3148 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

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CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.3148 of 2024

Mrs.Manju Priya

... Petitioner/Mother
of the detenu

Vs.

1.The City Police Commissioner,
Avadi City Police Commissioner,
Avadi City.

2.The Inspector of Police,
Korattur Police Station,
Chennai.

3.Mr.Vignesh

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the 1st and 2nd respondents to bring and produce the Detenues by named V.M.Rakshan Dev, aged about 6 years, S/o.Manju Priya and V.M.Mittran Dev, aged about 2 years, S/o.Manju Priya, now under the custody of 3rd respondent and let them with the petitioner



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For Petitioner : Mr.S.Senthil Kumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
(For R1 and R2)

ORDER

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

The writ of Habeas Corpus Petition has been instituted to direct the 1st and 2nd respondents to bring and produce the Detenues by named V.M.Rakshan Dev, aged about 6 years, S/o.Manju Priya and V.M.Mittran Dev, aged about 2 years, S/o.Manju Priya, now under the custody of 3rd respondent and let them with the petitioner custody.

2. The marriage between the petitioner and the third respondent was solemnized in the year 2017 and from and out of their wedlock, two male children born. Right from the birth, admittedly, the children were living with the father and the mother.

3. On account of matrimonial dispute between the petitioner and the third



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respondent, they are living separately. The petitioner raises several allegations of cruelty against the third respondent and at present, she is residing along with her mother at Chennai. At the time of leaving matrimonial home about two months back, she was not allowed to take the minor children aged about 6 years and two years. The petitioner states that the third respondent regularly abused her by physically and mentally. He is having the habit of harassing the petitioner under the influence of Drugs and Alcohol. However, we are not inclined to adjudicate those allegations raised between the petitioner and the respondent and it is for them to resolve those allegations by approaching the competent Court of law or through negotiations with the assistance of the elders or otherwise.

4. We have examined the parties. The third respondent is working as Service Engineer in Home Appliances Company. So mostly he spent time outside and the petitioner states that she is also employed and presently residing with her mother. We have examined the petitioner, who make several allegations against the third respondent and made a submission that she is capable of maintaining two minor children. The second child is aged about two years and when he saw his mother inside the Court, he spontaneously accompanied his



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mother / petitioner. As far as the first child / V.M.Rakshan Dev is concerned, he is aged about six years and able to say that presently he is residing with his father and grand mother. The grand mother is taking care of him. We found that he is scared and seeing his father even at the time we are taking to him. He himself admitted that he has been tutted. However, when we allowed him to accompany the petitioner/mother, he has joined immediately and spent about 45 minutes with his mother unhesitatingly. Therefore, we could form an opinion that the second child aged about 2 years spontaneously accompanied the mother and the first child aged about 6 years also joined with his mother and spent time with the petitioner/mother for about 45 minutes without any interruption and we found that he is also attached with the mother since both the children were brought up by the mother along with their father right from their birth.

5. Courts in the matter of child custody, has to consider the wishes of the children, if they are capable of expressing the same as well the best interest of the children. The best interest of the children is of paramount importance since the well being of the children at a tender age is to be protected by the Courts. This exactly is the reason why the custody of the children are considered even in Habeas Corpus Petition, which has been upheld by the Hon'ble Supreme



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6. Section 6(a) of the Hindu Minority and Guardianship Act of 1956 enumerates that “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;”

7. As far as the second child / V.M.Mittran Dev is concerned, he is aged about 2 years and the minute he saw his mother, joined with her happily. As far as the first child is concerned, he also joined with his mother and spent about 45 minutes inside the Court. We found that both the children are affectionate to each other. The children need not be separated merely on the ground that the first child is aged about 6 years. The first child has been tutored by the grand mother and the third respondent before attending this Court. The first child had admitted before us that he was tutored by his father and grand mother.



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8. Taking note of the overall circumstances and considering the fact that the petitioner / mother is capable of providing better education and livelihood to the minor children, we are inclined to grant custody of the two children to the petitioner/mother. The third respondent is at liberty to approach the competent Court of law for seeking visitation rights or otherwise for visiting the children. However, the third respondent shall not make any attempt to forcibly take away the children from the petitioner/mother in an illegal manner and in the event of any such attempt, the petitioner is at liberty to approach the Police for initiation of all appropriate actions.

9. With this liberty, the Habeas Corpus Petition stands disposed of. No costs.

[S.M.S., J.]

[M.J.R., J.]

06.12.2024

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

1. The City Police Commissioner,
Avadi City Police Commissioner,
Avadi City.



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2. The Inspector of Police,
Korattur Police Station,
Chennai.

3. The Additional Public Prosecutor,
Madras High Court.



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