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H.C.P.No.2457 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

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

H.C.P.No.2457 of 2023

Gayathri

...Petitioner

Vs.

1.The Commissioner of Police,
No.28, Muthurangam Street,
Tambaram, West Chennai – 600 045.

2.The Inspector of Police,
AW Police Station Selaiyur,
Chetalapakkam, Palikaranai.

3.Arun Saravanan

...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 of the petitioner's daughter “Aadhirai Minmini” Female, aged about 5 years, before this Court and hand over to the petitioner.



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For Petitioner : Mr.S.Balaji
For R1 & R2 : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind
For R3 : Mr.S.Rajkumar

ORDER

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

Heard Mr.S.Balaji, learned counsel for the petitioner, Mr.E.Raj Thilak, learned Additional Public Prosecutor, for the respondents 1 and 2 and Mr.S.Rajkumar, learned counsel for the 3rd respondent.

2. The petitioner is the mother of two girl children. She alleges that her husband, the 3rd respondent herein, had sent her out of the matrimonial house and retained custody of her two daughters. Hence, she had lodged a complaint before the All Women Police Station, Selaiyur, under CSR No.377/2023 and the same is pending. Thereafter, as per a mutual arrangement entered into between the petitioner and the 3rd respondent, the custody of their 1st daughter, namely Ezhil Oviya, aged about 13 years, was entrusted with the 3rd respondent and the custody of



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their 2nd daughter, namely, Aadhirai Minmini, aged about 5 years, was entrusted with the petitioner.

3. In the meantime, on 17.11.2023, the 2nd daughter, who was under the care and protection of the petitioner, was also taken by the petitioner's husband and as such, both her children are now staying with the 3rd respondent. Her complaint to the police for restoration of the custody of her children was recorded by the respondent police in the aforesaid CSR. In this background, this Habeas Corpus Petition has been filed.

4. By taking into account that both the children are of tender ages of 13 and 5 years and the mother is seeking for custody of the children, we had referred the parties to mediation, with the hope that they would amicably resolve the dispute with regard to the custody of the children. However, the mediation had ended in a failure on 10.01.2024.

5. Thereafter, on 11.01.2024, we had passed an interim order, facilitating the petitioner to meet her two children in her house on the 1st and 3rd Sundays of every month from 10.00 A.M. to 06.00 P.M. Both the



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petitioner, as well as the 3rd respondent, have been complying with the interim order till date.

6. In this background, today, we had interacted with the petitioner, the 3rd respondent and their 1st daughter, now aged about 14 years, in our Chambers. During the course of our interaction, both the petitioner, as well as the 3rd respondent, made allegations against each other touching upon their marriage, apart from denying the allegations put against them.

7. We do not intend to go into these allegations on the matrimonial disputes between the parties and we will not be justified in doing so, in exercise of our powers under Article 226 of the Constitution of India. Nevertheless, we, on a *prima facie* view, feel it appropriate that the present situation of the children being with the father/3rd respondent be continued and the petitioner herein be extended with visitation rights over her children.

8. We consciously refrain from spelling out our reasons for coming to such a decision of the 3rd respondent retaining custody of the children, since we intend to grant liberty to the parties to workout their remedies



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with regard to their custodial rights over the children before a Court of law and any observations made in this order may have a bearing on such proceedings.

9. On an overall appreciation of the statements made by both the parties, as well as their teenage daughter, we are of the affirmed view that the custody of the children, in the care and protection of their father, will not amount to illegal detention.

10. In the result, the Habeas Corpus Petition stands closed. However, there shall be a direction to the 3rd respondent herein to bring both his children to Chennai on the 1st Sunday of every month and leave them under the care and protection of their mother/petitioner herein from 10.00 A.M. to 06.00 P.M. Likewise, the petitioner is at liberty to visit her children at the 3rd respondent's house on the 3rd Sunday of every month between 10.00 A.M. and 06.00 P.M. During such visitation, in the manner of arrangement referred above, neither of the parties, i.e., the petitioner, as well as the 3rd respondent, shall cause any disturbances or inconvenience whatsoever to each other or to both the children and ensure that the visitation is carried out in a peaceful manner. The



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petitioner, as well as the 3rd respondent, are at liberty to workout their remedies before an appropriate Court of law, seeking for guardianship/custodial rights over their children and in case such a petition is filed by either of the parties, the concerned Court shall adjudicate the same in accordance with law and shall not be influenced in any manner by the present order or the arrangement of visitation granted to the petitioner. In other words, the present order shall not be cited as a binding precedent before the Court which may deal with the custodial rights. No costs.

[M.S.R., J] [S.M., J]
18.04.2024

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



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