



WEB COPY

H.C.P.No.3215 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

H.C.P.No.3215 of 2024

C.K.R.Aishwarya

... Petitioner

Vs.

- 1.State represented by
The Commissioner of Police,
Egmore, Chennai – 600 008.
- 2.The Inspector of Police,
E-1, Mylapore Police Station,
Mylapore, Chennai – 600 004.

3.R.Aditya Ramesh

4.Mrs.Uma Maheshwari

... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, directing the 2nd respondent to produce the petitioner's minor daughter Anjana, aged about 4 years before this Court from the custody of the 3rd respondent and 4th respondent and hand over to the petitioner.



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For Petitioner	: Mr.E.Senthil Kumar
For R1 & R2	: Mr.R.Muniyapparaj Additional Public Prosecutor
For R3 & R4	: Mr.R.S.Kirubakaran For Mr.A.Ramakrishnan

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The Habeas Corpus Petition has been instituted to direct the 2nd respondent to produce the petitioner's minor daughter Anjana, who is aged about four years.

2. The learned Additional Public Prosecutor appearing on behalf of the respondents 1 and 2 made a submission that a matrimonial dispute exists between the petitioner and the 3rd respondent, who is the husband of the petitioner. The 2nd respondent, Inspector of Police, Mylapore Police Station produced the detinue and the 3rd respondent before this Court. The mother of the 3rd respondent is also present. The petitioner is also present.



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3. We have examined the petitioner at first instance. The petitioner made several allegations against the 3rd respondent, who is her husband. She further states that that he frequently threatens her and prevents her from meeting their minor daughter. She claimed to have left the matrimonial home and subsequently filed a petition seeking dissolution of marriage. Additionally, the petitioner has filed a Guardianship Original Petition and Maintenance Case. The matrimonial dispute between the petitioner and the 3rd respondent is currently pending before the Competent Court.

4. We have examined the petitioner, who stated that she is frequently subjected to threats by the 3rd respondent and she was not even permitted to see her daughter, who is aged about four years. The 3rd respondent is presently employed as an advocate clerk at the Poonamallee and High Court premises. The petitioner has stated that he has no income to maintain the family and relies on his parents for financial assistance.

5. We are of the considered opinion that matrimonial dispute between the parties should be resolved in the manner known to law, as the petitions for dissolution of marriage, Guardianship OP and Maintenance Cases are pending before the Family Court. However, regarding the custody of the



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child is concerned, whether it is illegal or not is to be decided by this Court in the present habeas corpus petition.

6. Section 6 of the Hindu Minority and Guardianship Act, 1956 speaks about a Natural Guardian of a Hindu minor. Sub Section (a) to Section 6 enumerates that *“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. In the present case, the detained girl child is aged about 4 years. We have examined the minor child, who in turn on seeing her mother, spontaneously accompanied the writ petitioner/biological mother and happily reunited with her. The mother is employed, capable of maintaining the child and resides with her parents, who provides additional support. That being the factum, the best interest of the child is to be protected by this Court.

8. Considering the girl child's young age (4 years) and her affectionate reunion with the petitioner, who is her biological mother, we are of the considered opinion that, in the child's best interest and considering her future



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well-being, the child should be in her mother's custody.

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9. The 3rd respondent's has to secure support from his parents even for his own livelihood and to maintain a child. Therefore, we are not inclined to consider their interest.

10. In view of the facts and circumstances, we permit the detenue minor child, Anjana (aged about four years), to accompany her mother. The petitioner is entitled to custody of her minor daughter.

11. The 3rd respondent shall not interfere with the peaceful living of the petitioner as well as the minor daughter. In the event of any forceable way to take away the child, the petitioner is at liberty to approach the jurisdictional Police, who in turn shall initiate all appropriate actions by registering criminal case.

12. However, regarding visitation rights or other related matters, the 3rd respondent is at liberty to approach the Competent Court, where the matrimonial disputes are pending and in the manner known to law.



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13. The learned counsel for the petitioner on instruction from the petitioner would submit that they will withdraw both the Guardianship Original Petition as well as the Maintenance Case from the Court of law. It is for the petitioner to take appropriate action to withdraw the said petitions before the Court in which the cases are pending.

14. With the above directions, the Habeas Corpus Petition stands disposed of.

[S.M.S., J.] [M.J.R., J.]
20.12.2024

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order / Non-speaking order



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To

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- 1.The Commissioner of Police,
State,
Egmore, Chennai – 600 008.
- 2.The Inspector of Police,
E-1, Mylapore Police Station,
Mylapore, Chennai – 600 004.
- 3.The Additional Public Prosecutor,
Madras High Court.



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and
M.JOTHIRAMAN, J.

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