



H.C.P.(MD).No.241 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.02.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

H.C.P.(MD).No.241 of 2024

Hayagrivan

.. Petitioner/Father of the Detenue

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Assistant Commissioner of Police,
Thirupparankundram,
Madurai.

3.The Inspector of Police,
Thirunagar Police Station,
Madurai.

4.Parvathi

5.Boothpandi

6.Pappu

7.Arunachalam

.. Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the respondents 1, 2 & 3 to produce the body or person of the petitioner's daughter by name Govarthini Naachiyar D/o.Hayagrivan, Female, aged 3 years, the detinue in the present case, before this Court and consequently hand over the custody of the detinue to the petitioner.

For Petitioner : Mr.M.Pitchai Muthu
For R-1 to R-3 : Mr.RMS.Sethuraman
Additional Public Prosecutor
For R-7 : Mr.Sivakumar

ORDER

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The present Habeas Corpus Petition is filed by the father alleging that his minor daughter, aged about 3 years, was taken away from his custody by the seventh respondent, who is none other than his wife.



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2. This case has a checkered history. Due to misunderstanding, the parents got separated. The petitioner herein has sought for guardianship of the minor child before the Family Court, Madurai in G.W.O.P.No.1164 of 2022 and an *ex parte* order in his favour was passed. Thereafter, the child remained in the custody of the petitioner. While so, alleging that the child was forcibly taken away from his custody, the petitioner approached this Court by filing H.C.P.(MD).No.951 of 2023. This Court, after considering the rival submissions, directed the seventh respondent (wife) to hand over the custody of the minor child to the petitioner herein. This order was passed on the strength of the *ex parte* order passed in G.W.O.P.No.1164 of 2022 dated 07.06.2023. At the same time, this Court also found that the service of the seventh respondent in the Guardianship and Wards Original Petition was not done in the manner known to law and an application filed to set aside the *ex parte* order is pending. Therefore, taking note of the said fact, this Court directed the parties to work out their remedy before the Family Court, where the application to set aside the *ex parte* order in the Guardianship and Wards Original Petition is pending.



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3. Unfortunately, thereafter, a criminal complaint has been lodged against the petitioner by the seventh respondent alleging that on 17.01.2024, she was assaulted by the petitioner while she was crossing the residence of the petitioner. Based on the said complaint, FIR was registered by Thirunagar Police Station in Crime No.38 of 2024 for the offences under Section 294(b), 324, 506(2) of IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002. When the petitioner went to the Police Station along with the child to attend the enquiry, the Police has remanded the petitioner to judicial custody and since there was no one else to take care of the minor child, the complainant/seventh respondent/mother of the minor child was given custody of the child. Six days after his remand, the petitioner was granted bail and thereafter, he has filed this Habeas Corpus Petition, which is now under consideration.

4. The learned counsel appearing for the seventh respondent submitted that the interlocutory application filed to set aside the *ex parte* order and restore the Guardianship and Wards Original Petition has been allowed and the matter is now ripe for trial.



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5. Considering the entire facts and the events, which has happened so far, this Court is of the view that till the disposal of the Guardianship and Wards Original Petition, the petitioner shall be the custodian of the minor child and based on the outcome of the Guardianship and Wards Original Petition, the custody of the minor child shall be decided. The petitioner is directed to co-operate with the trial of G.W.O.P.No.1164 of 2022 pending on the file of the Family Court, Madurai and he shall not delay the process. The Family Court, Madurai is directed to conclude the trial in G.W.O.P. No.1164 of 2022 within a period of thirty (30) days from the date of receipt of a copy of this order.

6. The petitioner as well as the seventh respondent along with the child are present before this Court today. The custody of the child is now handed over to the petitioner by the seventh respondent. It is open to the seventh respondent to approach the appropriate Court, if there is any delay in the disposal of the Guardianship and Wards Original Petition beyond the period prescribed above.



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7. With the above direction, this Habeas Corpus Petition is disposed

of.

(G.J.,J.) (C.K.,J.)
22.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

- 1.The Commissioner of Police,
Madurai City,
Madurai.
- 2.The Assistant Commissioner of Police,
Thirupparankundram,
Madurai.
- 3.The Inspector of Police,
Thirunagar Police Station,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Family Court,
Madurai.



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