



H.C.P.(MD) No.486 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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Gayathri

... Petitioner

-VS-

1.The Commissioner of Police
O/o. The Commissioner of Police
Madurai.

2. The Inspector of Police
All Women Police Station,
Thilagar Thidal Police Station
Madurai

3. C.Vijayaraja

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents 1 and 2 to produce the person or body of the petitioner's son namely Vijayaram aged about 8/2024 and Vishruth aged about 3/2024 before this Court and hand over the custody to the petitioner.



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For Petitioner : Mr.T.Thirumurugan
For R1 & R2 : Mr.R.M.S.Sethuraman
Additional Public Prosecutor
For R-3 : Mr.R.Ramasamy

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

This Habeus Corpus Petition has been filed to direct the respondents 1 and 2 to produce the person or body of the petitioner's son namely Vijayaram aged about 8/2024 and Vishruth aged about 3/2024 before this Court and hand over the custody to the petitioner.

2. The case of the petitioner is that she got married to the third respondent and out of wedlock they have got two sons namely Vijayaram and Vishruth aged about 8 and 3 years respectively and that she was living along with the third respondent. Infact after marriage the third respondent become alcoholic and used to beat the petitioner and her children with belt without any reason. Whiles, on 20.03.2024 the petitioner had taken the children to her parental home at Kodaikanal. Whiles, when she was alone in her parents house the third respondent had come there and taken the children from her custody by force after



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assaulting her. The petitioner had lodged complaint before All Women Police Station, Kodaikanal and it was registered in CSR No. 66 of 2024 dated 22.03.2024. Despite the insistence by the All Women Police Station, Kodaikanal to the third respondent to produce the children the third respondent did not produce the children, thereby the All Women Police Station, Kodaikanal had directed the petitioner to approach the second respondent stating that they do not have jurisdiction. The second respondent finding that it is case of taking away the children by force had registered a case in Crime No. 10 of 2024 for the offences under Sections 323 IPC and Section 75 of Juvenile Justice Act. Despite the insistence by the second respondent the third respondent had not appeared, thereby the present petition has been filed by the petitioner.

3. When the matter came up for admission on 22.04.2024 this Court had directed the learned Additional Public Prosecutor to take notice and posted the case on 25.04.2024. Pursuant to the notice the third respondent is present before this Court along with the children.

4. The learned counsel appearing for the petitioner would submit that the mother was having custody of the children and the children were taken



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WEB COPY by force from her parental home which warranted her to give the complaint to the All Women Police Station, Kodaikanal and thereafter before the second respondent police. He would further submit that the third respondent had given assurance to produce the children before the second respondent but he has not produced the children, thereby the present petition has been filed.

5. The learned counsel appearing for the third respondent would submit that the third respondent is the father of the children and due to family dispute the petitioner without informing the third respondent has taken the children to Kodaikanal . Considering the education of the first son who is now studying in Kendriya Vidyalaya School, Thiruparankundram he had taken the children and he would submit that the children are not under illegal custody. He would further submit that the third respondent has also sought for anticipatory bail in respect of Crime No.10 of 2024 registered by the second respondent and it is pending before the Principal District Judge, Madurai in Cr.M.P.No.1974 of 2024 and the matter has been referred for mediation.



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6. This Court is not concerned with the allegations and counter allegations made against each other. This Court enquired the minor children and they submitted that while they were along with their mother their father had taken them by force and they they were taken to different places and kept in hotel room and during such time they were also not fed properly and they submitted that they are willing to stay with their mother and expressed their reluctance to go along with their father. We also enquired petitioner and the third respondent.

7. Though the third respondent is the father and legal guardian, he had taken custody of the children by force. Taking into consideration the welfare of the children who are aged about 8 years and 3 years and that they have been forcibly taken away from the custody of the mother, this Court is of the view that the custody of the children can be handed over to the petitioner. The petitioner shall ensure that education of the first son is not interrupted in any manner.



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8.Recording the same, this Habeus Corpus Petition is closed.

[A.D.J.C., J.]

[K.R.S., J.]

25.04.2024

NCC : Yes / No
Index : Yes / No
Internet: Yes / No
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To:

- 1.The Commissioner of Police
O/o. The Commissioner of Police
Madurai.
2. The Inspector of Police
All Women Police Station,
Thilagar Thidal Police Station
Madurai
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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AND
K.RAJASEKAR, J.

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