



H.C.P.(MD) No.693 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2024

CORAM:

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

H.C.P.(MD) No.693 of 2024

P.T.Shivashanmuga Vignesh

... Petitioner

-VS-

1.The Superintendent of Police,
O/o.Superintendent of Police,
Sivagangai District.

2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.

3.Priyavarshini

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents 1 & 2 to produce the person or body of petitioner's daughter by name Selvi.Athiksha, D/o.Shivashanmuga Vignesh, aged about 2 years before this Court and handover the custody to the petitioner.



H.C.P.(MD) No.693 of 2024

WEB COPY

For Petitioner

:Mr.C.M.Arumugam

For R1 & R2

:Mr.RMS.Sethuraman

Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed by the father of the detenu seeking to produce the alleged detenu namely Athiksha, aged about 2 years before this Court and handover the custody to the petitioner.

2. The case of the petitioner is that he married the third respondent on 06.06.2019. Due to the wedlock, they were blessed with a girl child on 03.01.2022. In the month of June 2023, the third respondent had gone to the parental house for her brother's marriage and thereafter, she has refused to come to the matrimonial home without any valid reason. The third respondent is not allowing the petitioner to see the child. Therefore, the petitioner has sent a representation to the respondents 1 & 2 on 07.06.2024. Since the respondents 1 & 2 have not taken any action on the petitioner's representation, he has filed the present habeas corpus petition.



H.C.P.(MD) No.693 of 2024

WEB COPY

3. Today, when the matter is taken up for hearing, the learned Additional Public Prosecutor appearing for the respondents 1 & 2 would submit that the third respondent is none other than the wife of the petitioner and there is a dispute with regard to the custody of the child. The petitioner has filed H.M.O.P.No.345 of 2021 for divorce before the Family Court, Sivagangai and the same was closed as per the agreement made by both parties. Thereafter, the petitioner filed H.M.O.P.No.24/2024 for restitution of conjugal rights before the Family Court, Sivagangai. In the meantime, the third respondent has preferred a complaint before the All Women Police Station, Nilakottai and the same was registered against the petitioner and others in Cr.No.2 of 2024 for the offences under Sections 498, 294(b), 323, 506(ii) IPC. In the said case, the petitioner filed CrI.O.P(MD)No.4306 of 2024 seeking anticipatory bail. This Court, by order dated 22.04.2024 has granted interim anticipatory bail to the petitioner and others and also referred the matter to the Mediation Centre and directed the both parties to appear before the Mediation Centre, but the third respondent without appearing before the mediation centre, in order to circumvent the due process has filed the present petition seeking custody of the child. He further submitted that the child is with the mother. The mother is a natural guardian and the child is not in the



H.C.P.(MD) No.693 of 2024

WEB COPY

illegal custody and thereby the petition is not maintainable. Already the matter is pending before the Family Court for adjudication and hence, the respondent police are unable to do anything in this case and there is no necessity for issuance of habeas corpus. He further submitted that since the matter is pending before the Family Court for adjudication, the petitioner has to approach the appropriate forum seeking custody of the child.

4. This Court finds that already matrimonial dispute is pending between the parties, the custody of the child is with the mother and it will not amount to illegal detention.

5. In view of the above, this habeas corpus petition stands closed granting liberty to the petitioner to approach the appropriate forum seeking custody of the child.

[A.D.J.C., J.] [K.R.S., J.]
18.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
am



H.C.P.(MD) No.693 of 2024

WEB COPY

To:

- 1.The Superintendent of Police,
Sivagangai District.
- 2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD) No.693 of 2024

A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.

am

H.C.P.(MD) No.693 of 2024

18.06.2024