



H.C.P.(MD)No.976 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

H.C.P.(MD)No.976 of 2024

Shibabi

... Petitioner / Mother of Detenu

Vs.

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

2.The Inspector of Police,
Kovilpatti All Women Police Station,
Thoothukudi District.

3.Mansa Beevi

4.Sha Usen
*(R4 is impleaed vide order dated 25.09.2024 in
Crl.M.P.(MD)No.9707 of 2024 in
H.C.P.(MD)No.976 of 2024 by CVKJ & RPJ).*

5.The Superintendent,
Sakthi Vidiyal Shelter Home,
No.21, Kennet Nagar, Muthupatti,
Madurai – 625 003. ... Respondents
*(R5 is suo motu impleaed vide order dated
25.09.2024 in H.C.P.(MD)No.976 of 2024 by
CVKJ & RPJ).*

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PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, directing the Respondents to produce body or person of petitioner's son namely Abbas son of Sha Usen aged about 11 years before this Court and hand over him to the custody of the petitioner.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.E.Antony Sahaya Prabahar,
Addl. Public Prosecutor for R1, R2 & R5.
Mr.Ayyappa Raja for R3 & R4.

ORDER

(Order of the court was delivered by G.R.Swaminathan, J.)

The mother of the minor child has filed this habeas corpus petition. On 12.09.2024, the following order was passed:-

“The mother of a young boy aged about 11 years has filed the Habeas Corpus Petition seeking custody and complaining that the father of the boy had been arrested in a dacioty case and that the boy is now in the custody of the sister of her husband.

2. The learned counsel for the petitioner stated that the father of the boy has a history of being involved in various



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offences and stated that he belongs to a nomadic tribe from Iran and he and his family members are habitual offenders.

3. This fact has been very strongly disputed by the learned counsel who appears for the sister of the husband of the petitioner who had been impleaded as party. He raised objection that the father has not been impleaded as party to the proceedings. It had also been stated that only in one case the father had been arrested and that he is not a habitual offender. It is stated that the child is studying in a school at Madurai and residing with the paternal aunt and continuing his studies and therefore, the petition has to be dismissed.

4. We had an interaction with the mother of the child and also the child. The mother had expressed her grievance by stating that the child had been tutored and therefore, some space must be given to the child to reflect about the issues which surround his education and the marital discord between his mother and father.

5. The child, has been evidently tutored as he has given prepared answers for any question put by us.

6. In these circumstances, we are of the opinion that it would be conducive for the mental health of the child if he is to stay in a Home and some professional counselling is given to the child for him to realize what is good and what is not good for him.



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7. *In this connection, the learned Additional Public Prosecutor had stated that the Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai- 625 003 would be a suitable place for temporary stay of the child and specialized counselling can be given to the child. It is also informed that the Superintendent, Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai- 625 003 had also consented to take the guardianship of the child for a temporary period and also provide professional counselling for the child.*

8. *This is very much essential, as the young boy for his long future and it is only appropriate that he takes the right path and does not waver in the course of his life.*

9. *We accordingly place a request to the Superintendent, Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai- 625 003 to take care of the child Abbas who had been born in 2013 and offer professional counselling to him and impress upon him that it would be only advantage if he concentrate on his education.*

10. *Let a report be forwarded by the Superintendent Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai- 625 003 for perusal of this Court regarding the conduct of the child and the professional assistance given to him.*



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11. List the case once again on 25.09.2024. If request is placed the mother may be permitted to meet the child.”

2.On 25.09.2024, the following order was passed:-

“Crl.M.P(MD) No.9707 of 2024, has been filed to implead the petitioner Shibabi as the 4th respondent in the Habeas Corpus Petition, who is the father of the child.

2.In view of the fact that the father is a necessary party and his views must be heard before final order is passed, this petition stands allowed.

3.On the previous hearing on 12.09.2024, keeping in mind the best interest of child, we had directed the child to stay at Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai – 625 003.

4.The child has been brought from the home today.

5.The learned counsel for the petitioner raised a grievance that though we have granted permission to the mother of the child to visit the child, she was not permitted to visit. On the other hand, the father of the child without any specific direction from the Court had been permitted to visit the child.



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6.In view of that particular fact, the Superintendent, Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai – 625 003 is suo-motu impleaded as the 5th respondent in the HCP.

7.Registry may carry out necessary amendment by impleading the 4th and 5th respondents in the cause title of the HCP.

8.The learned counsel for the petitioner may take private notice to the newly impleaded 5th respondent/ the Superintendent, Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai – 625 003 returnable by 14.10.2024.

9.The Child may continue to stay at Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai – 625 003. The Superintendent, Sakthi Vidiyal Shelter Home may exercise caution while permitting the father to visit the child and permit the mother of the child to visit the child whenever representation is made.

10.On receipt of notice, the Superintendent of the Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai – 625 003 may also file a report about the persons, who have visited the child and the general impression upon the conduct of the child.



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11.For filing of aforesaid report and counter of the 3rd and 4th respondents, call the matter once again on 14.10.2024.”

3.On 14.10.2024, the following order was passed:-

“The child is now staying at Sakthi Vidiyal Shelter Home, No.21, Kennet Nagar, Muthupatti, Madurai – 625 003.

2.Mr.T.Senthil Kumar, learned Additional Public Prosecutor states that the child has now adopted himself to the said surroundings.

3.Let him continue to reside at the home. Let counselling be given to him. The directions issued on 29.09.2024 relating to exercising caution for granting permission to the father of the child to visit the child is maintained.

4.The learned counsel for the petitioner filed an additional typed set of papers stating that there are two separate addresses given for the father and produced the copy of voter's Identity Card and Aadhar Card in that regard.

5.The learned counsel for the respondents 3 and 4 request time for filing counter. Time is granted.



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6.Let a counter be filed on all these aspects. List the matter once again on 11.11.2024.”

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4.The report from Sakthi Vidiyal Shelter Home states that both the father as well as the mother separately met the child on quite a few days. We had an interaction with the child. The child is insistent that he would go with the father.

5.It is well settled that the Court cannot go merely by the wishes expressed by the minor child. His interest alone would rank as paramount consideration.

6.It is beyond dispute that the father of child was arrested in connection with a robbery case. When the habeas corpus petition was filed, the father of child was in jail. Now, he has come out of bail.

7.Let the child continue to remain at Sakthi Vidiyal Shelter Home and pursue his studies. The parties may workout their rights before the jurisdictional Family Court / Civil Court.



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8.This habeas corpus petition is disposed of accordingly.

(G.R.S. J.) & (R.P. J.)
11.11.2024

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

- 1.The Superintendent of Police,
O/o.The Superintendent of Police,
Thoothukudi District.
- 2.The Inspector of Police,
Kovilpatti All Women Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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