



H.C.P.(MD) No.1129 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

H.C.P.(MD) No.1129 of 2024

Hayagrivan

... Petitioner / Father of Detenue

-Vs-

**1.The Commissioner of Police,
O/o. The Commissioner of Police,
Madurai District.**

**2. The Inspector of Police,
O/o.Thirunagar Police Station,
Madurai District.**

3.Arunasalam

... 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 herein to produce body or person of petitioner's daughter, namely, GovardhiniNachiyar aged 4 years before this Court and hand over the custody to the petitioner.



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For Petitioner : Mr.R.Anand
for Mr.R.Niresh Kumar

For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor for R1 & 2

: Mr.K.Navaneetharaja for R3

ORDER

The Habeas Corpus Petition has been filed to direct the respondents 1 and 2 herein to produce body or person of petitioner's daughter, namely, Govardhini Nachiyar aged 4 years before this Court and hand over the custody to the petitioner.

2. The petitioner is present. The third respondent, mother of the detenu is also present. It seems to be a dispute between the petitioner and the third respondent due to the custody of the child. The petitioner had filed a petition for custody of the child in G.W.O.P.No.1164 of 2022, before the Family Court at Madurai, and the Family Court after recording evidence by examining the petitioner as P.W.1 and the third respondent as R.W.1 and after considering the



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documents, Ex.P1 to Ex.P14 and the respondent's documents as Ex.R1 to Ex.R13 and also Court exhibit Ex.C1, by order dated 15.07.2024, had granted custody of the child to the third respondent and had very specifically stated that the petitioner is not entitled for custody. As on date, the minor child is with the third respondent herein under lawful custody. The learned counsel for the petitioner however pointed out that the evidence of P.W.2 - Doctor had not been considered in the judgment of the Family Court.

3. The learned counsel for the third respondent pointed out that P.W.2 had been examined when an *exparte* order had been obtained. After the *exparte* order had been set aside by the Court, P.W.2 did not come forward to tender evidence. We are not placing reliance on the evidence of P.W.1 or evidence of P.W.2.

4. The Division Bench of this Court in the earlier order in H.C.P. (MD)No.951 of 2023 by order dated 01.08.2023 had observed that the third respondent had forcibly taken the child on 23.06.2023 and therefore, had granted interim custody of the child to the petitioner herein. The learned counsel for the



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petitioner also exhibited a video in which, according to him, the third respondent took the child forcibly and away from the petitioner herein. Further, there is also reference to an other Habeas Corpus Petition in H.C.P.(MD)No.241 of 2024, wherein another Division Bench of this Court, by an order dated 22.02.2024 had stated that the custody of the child had been handed over to the petitioner herein by the seventh respondent / third respondent herein. Liberty had been granted to the seventh respondent / third respondent herein to approach the appropriate Court, seeking custody. This order was passed on 22.02.2024.

5. Both the orders are 'non est' as on date as the Family Court, Madurai, had passed an order after analysing the evidence of the parties in G.W.O.P. No. 1164 of 2024 and by order dated 15.07.2024, had handed over the custody of the child to the third respondent.

6. Both the orders passed by the Division Bench in the Habeas Corpus Petition have been passed only on the basis of affidavits filed and not on the basis of analysis of evidence. The evidence had been analysed in G.W.O.P.No.1164 of 2022 and orders have been passed recognizing the third respondent as the



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guardian of the child. She has custody. She may continue to retain custody.

7. C.M.A.(MD)No.1077 of 2024, had been filed by the petitioner herein, questioning the order of the Family Court, in G.W.O.P.No.1164 of 2022. We are informed that C.M.A had also been dismissed for default on 03.10.2024. It is informed that a petition to restore the appeal has been filed.

8. As on date, the third respondent is having lawful custody of the child. No further orders are required in this Habeas Corpus Petition.

9. The learned counsel for the petitioner stated that the observations made in this order should be restricted only to examine the limited scope of the issue raised in the Habeas Corpus Petition.

10. We have made observations only in the present Habeas Corpus Petition and not with respect to any other pending petition filed by the parties seeking custody of the child.



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11. Accordingly, this Habeas Corpus Petition stands dismissed.

[C.V.K., J.] & [R.P., J.]

21.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
LS

To:

- 1.The Commissioner of Police,
O/o. The Commissioner of Police,
Madurai District.
2. The Inspector of Police,
O/o.Thirunagar Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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