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H.C.P.(MD)NO.1244 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

H.C.P.(MD)No.1244 of 2024

Nishanththangam

... Petitioner / Father of the detenu

Vs.

1. The Superintendent of Police,
O/o.the Superintendent of Police,
Ramanathapuram.
2. The Deputy Superintendent of Police,
O/o.the Deputy Superintendent of Police,
Keelakarai, Ramanathapuram.
3. The Inspector of Police,
Sayalkudi police station,
Sayalkudi,
Ramanathapuram.
4. Priya
(R-4 is impleaded vide order dated 18.10.2024
in CrI.M.P.(MD)No.10967 of 2024)

... Respondents

Prayer: Habeas Corpus petition is filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the detenu, the petitioner's minor children Saundharya aged about 4 years and Pughazharasan aged about 2 years before this Court and let the petitioner's children Saundharya and Pughazharasan to hand over the custody to the petitioner.



For Petitioner : Mr.T.Balarathinakumar
For R-1 to R-3 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

* * *

ORDER

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

Nishanththangam (writ petitioner herein) married Priya (fourth respondent herein) on 22.04.2019. Through the wedlock, two children were born. Priya developed extra marital relationship with one Ajith. On 17.06.2024, Priya eloped with the said Ajith. She also took the children along with her. The petitioner's complaint was registered as Crime No.207 of 2024 by the third respondent. Since the missing persons were not traced, the present Habeas Corpus petition came to be filed for causing production of the children.

2. When the matter was listed on 05.12.2024, the third respondent produced the minor children before us. Priya, the mother of the children and wife of the petitioner was also present. Interestingly, Ajith, Priya's paramour was also present. Priya did not exhibit any remorse. She was categorical and clear in her stand that she wants to live only with Ajith.



3. The only question that calls for consideration is whether the custody of the minor children should be given to the petitioner. Though the father is the natural guardian, custody of the children with the mother cannot be said to be illegal. In normal circumstances, we would have relegated the petitioner to go before the civil Court / Family Court and file GWOP for getting relief. But the special facts and circumstances of this case demand a departure. The petitioner has been running an electronic service center at Sayalkudi, Ramanathapuram. Priya and the petitioner were residing therein along with their children. The matrimonial home was at Sayalkudi. Priya decided to elope. While she was at liberty to do so and face the consequences flowing from her act, she had no right to remove the children from the custody of the father. We can understand the wife leaving the matrimonial home and taking the children when the relationship between them has come under strain. In such cases, the Family Court / civil Court will decide who will have the custody of the children. But where the wife wants to elope with her paramour and desert the legally wedded husband, she may not be entitled to take the children along with her. In this case, we had a detailed interaction not only with the petitioner but also with his parents. The parents of the petitioner informed us that they are living in a joint family.



It is obvious to us that the parents of the petitioner have deep love and affection for their grandchildren. Priya was accompanied by her paramour and not by her parents. The elder child is a girl. We have our own misgivings about the safety of the girl child. Moreover, Priya is not in any gainful employment. She is entirely dependent on Ajith for maintaining herself as well as the children. If the paramour deserts Priya, the fate of the children will be in deep trouble.

4. After carefully balancing all the relevant facts and circumstances, we come to the considered conclusion that the interest of the children will be met only if the petitioner is granted custody. We direct the fourth respondent to hand over the children to the petitioner. We however make it clear that this arrangement would be subject to any order that may be passed by the jurisdictional civil Court / Family Court. This Habeas Corpus petition is allowed.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)

5th December 2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

PMU



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To:

1. The Superintendent of Police,
O/o.the Superintendent of Police,
Ramanathapuram.
2. The Deputy Superintendent of Police,
O/o.the Deputy Superintendent of Police,
Keelakarai, Ramanathapuram.
3. The Inspector of Police,
Sayalkudi police station,
Sayalkudi,
Ramanathapuram.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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