



HCP(MD)No.1582 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2024

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

HCP(MD)No.1582 of 2023

Praveena

... Petitioner

vs.

1. The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City,
Tirunelveli.

2. The Inspector of Police,
All Women Police Station,
Palayamkottai (City),
Tirunelveli District.

3. Gurunathan

4. Suresh

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to direct the respondents 1 and 2 to produce the body or person of the detenu by name Mathumitha, daughter of Gurunathan, aged 3 years before this Court and hand over custody to the petitioner.



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For Petitioner : Ms.M.Sudha Rani
For R1 & R2 : Mr.RMS.Sethuraman
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

The petitioner/Praveena who is the mother of 3 year old child by name Mathumitha has filed this Habeas Corpus Petition stating that through the 3rd respondent she gave birth to the said Mathumitha in the month of October 2020. After handing over the child to the 4th respondent to take care as per the instructions of the 3rd respondent, the petitioner left India and went to Dubai. Thereafter, she was prevented from seeing the child on the instructions of the 3rd respondent. It was also alleged that in the birth certificate, the 4th respondent has given the name of the petitioner's erstwhile husband Gunaseelan as the father of Mathumitha though the biological father of Mathumitha is the 3rd respondent. Criminal complaint been lodged and registered in CSR.No. 416 of 2022 and after representation to some of the higher authorities, present HCP is filed.



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2. The counsel appearing for the petitioner submitted that being the biological mother of the child, she is entitled to have custody of the baby Mathumitha and the child is in illegal custody of the private respondents. Further, it is also the specific allegation that in the birth register, wantonly the name of the father of the baby been shown as Gunaseelan instead of Gurunathan.

3. The counsel appearing for the respondents 3 and 4 submits that the 3rd respondent is the biological father of the child. After giving birth to the child, the petitioner had left the child and went to Dubai without taking care of the child and the child is being taken care by the 4th respondent on the request of the 3rd respondent being the biological father.

4. This Court after giving anxious consideration to the rival submissions, is of the view that the matter has to be tried based on the evidence and to be decided as to the biological parent, and whether the custody must be given to the biological mother or biological father. HCP cannot be abused for deciding the custody of the child.



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5. Hence, the Habeas Corpus Petition is dismissed with liberty to the petitioner to work out her remedy as per the proper statutes and provisions. No costs.

(G.J., J.) (C.K., J.)
19.02.2024

Index : Yes / No
Neutral Citation : Yes / No
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