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W.P.No.19427 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.05.2025

CORAM

THE HON'BLE MRS. JUSTICE T. V. THAMILSELVI

W.P.No.19427 of 2025
and
W.M.P.No.21686 of 2025

Bavani

... Petitioner

Vs.

1. The District Collector,
Office of District Collector,
Tiruvannamalai District.

2. The District Children Protection Unit,
Office of District Social Welfare Office,
Tiruvannamalai,
Tiruvannamalai District.

3. The Government Children Homes,
The Children Protection Officer,
No.437/1, Green Nagar,
Nearby Parcel Railway Gate,
Tirupathur.

4. The Inspector of Police,
Vandavasi All Women Police Station,
Tiruvannamalai District.

... Respondents



W.P.No.19427 of 2025

PRAYER: Writ Petition filed under Article 226 of the Constitution of India in the nature of Writ of Mandamus directing the respondents 2 and 3 to hand over the petitioner's minor male child namely Santhosh by considering the petitioner's representation dated 20.05.2025.

For Petitioner : Mr. E. Sathyaraj

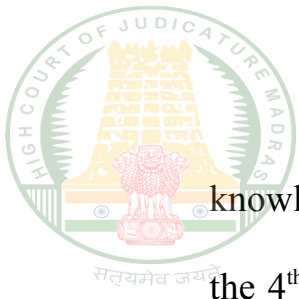
For Respondents : Mr. P.Ganesan
Additional Government Pleader
for R1 to R3

Mr. R. Kishore Kumar
Government Advocate
(Crl. Side) for R4

ORDER

This petition has been filed seeking to direct the respondents 2 and 3 to hand over the petitioner's minor male child namely one Santhosh by considering the petitioner's representation dated 20.05.2025.

2. It is the case of the petitioner that the petitioner and one Sarathkumar loved each other and got married. Due to their wedlock, a male child namely one Santhosh was born to them on 16.01.2021 in the Government General Hospital, Chengalpattu. Later, the petitioner's husband sold the male child to one Jothi at Chennai, without the petitioner's



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knowledge. Hence, the petitioner lodged a complaint dated 12.06.2021 with the 4th respondent police, who registered an F.I.R. in Crime No.10 of 2021 for the offence under Section 417, 370 (2), 370 (4), 420 and 494 of I.P.C. and Section 81 of the Juvenile Justice (Care and Protection of Children) Act. Later, the petitioner was deserted by her husband.

3. Later, the petitioner's father-in-law viz., Dharuman filed a petition under Section 97 of Cr.P.C. in CrI.M.P. No.SR.No.3240 of 2021 before the learned Judicial Magistrate, Vandavasi, sought to hand over the minor child to his custody and the said petition was returned by the learned Magistrate, Vandavasi with a docket endorsement dated 08.11.2021.

4. Subsequently, father of child also deserts her. On several occasions, the petitioner approached respondents 2 and 3 with a request to hand over her child viz., Santhosh, who was under their custody and they refused the petitioner's request. Finally, the petitioner made a representation dated 20.05.2025 to the 2nd respondent with a request to hand over the child to her.



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5. The petitioner is the biological mother of the minor child, however, the respondents refused to hand over the child without any reason and they are trying to give the child for adoption to a third person. The petitioner is willing to take the child back into her custody and also stated that any undertaking as required would be furnished to the respondents and that the petitioner will take care of the child in the future also and the same was not considered by the respondents. Hence, the petitioner is before this Court.

6. Heard both sides.

7. Learned counsel for the petitioner submits that the petitioner being a mother want to keep the child with her. However, the learned Government Advocates appearing for the respective respondents objected to the same and submit that as per the investigation the petitioner along with certain individuals belong to Chennai had sold the child for a sum of Rs.1,20,000/-. Therefore, the Child Welfare Board conducted an enquiry and now, the male child one Santhosh, who was born to the petitioner and one Sarathkumar is under the custody of the respondents.

8. Section 6 (a) of the Hindu Minority and Guardianship Act, 1956



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provides that till the age of five years of a child, the mother is the natural guardian. This Court is of the view that though, a criminal case is pending, the mother as a natural guardian is entitled to keep the child with her custody and accordingly, the following conditions:

a) The petitioner is directed to deposit a sum of Rs.50,000/- to the credit of Crime No.10 of 2021 pending before the learned Judicial Magistrate, Vandavasi in order to keep the custody of the minor child with her;

b) Since, the father of the child also got married with another woman and the petitioner seeks custody of the child for upbringing, this Court, considering the welfare of the child directs the respondents 2 and 3 to handover the minor child to the custody of the petitioner within a period of one week from the date of receipt of a copy of this order subject to the condition that the petitioner deposits a sum of Rs.50,000/- to the credit of Crime No.10 of 2021;

c) The respondent No.3 is directed to monitor the welfare of the child, monthly once, without causing any annoyance to the child and the mother. It is made clear that this order has no influence over the pending criminal case and the respondents are entitled to proceed with the criminal case and if



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possible settle further issues in the Mediation Centre, Tiruvannamalai.

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9. With the aforesaid directions, this writ petition is disposed of. No

Costs. Consequently, the connected miscellaneous petition is closed.

28.05.2025

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab

To

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T. V. THAMILSELVI. J.,

ab/dhk

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