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H.C.P.No.1604 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2025

CORAM

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND**

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

H.C.P.No.1604 of 2025

J.Easwari

... Petitioner

-VS-

1. The Superintendent of Police,
Office of the Superintendent of Police,
Salem District.

2. The Inspector of Police,
Mecheri Police Station,
Salem District.

3. Jeyaurugan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records in CSR No.506 of 2025 on the file of the 2nd respondent based on the complaint dated 22.07.2025, produce the petitioner's minor son, J.Pragadeesh, aged 5 years, S/o Jeyamurugan and handover to the petitioner.

For Petitioner : Mr.R.Murali

For R1 & R2 : Mr.A.Damodaran
Addl. Public Prosecutor

For R3 : Mr.Ramana Reddy



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ORDER

(By J.Nisha Banu,J.)

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This petition has been filed for a direction to the 2nd respondent herein to produce the body or in person of the petitioner's minor son, J.Pragadeesh, aged 5 years, S/o Jeyamurugan before this Court and handover him to the petitioner.

2. The learned counsel for the petitioner would submit that the minor child was snatched away from the petitioner/mother by the father/3rd respondent and kept the custody of the child with him without the consent of the petitioner and not permitting her even to see him, which amounts to illegal detention and despite the complaint lodged with the concerned police, no steps were taken to secure the minor child.

3. When the matter is taken up for hearing, the minor child, namely, J.Pragadeesh along with his father, Jeyamurugan who is the 3rd respondent herein has been produced before this Court by the Police. The petitioner, who is the mother of the minor child, is also present.



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4. We permitted the petitioner to interact with her minor child and get him from the hands of the 3rd respondent/father. But when the petitioner tried to interact her minor child and get him from the hands of the 3rd respondent, the child started crying a lot and refused to go with the petitioner/mother and showed much interest to be with his father/3rd respondent.

4. Therefore, taking note of the fact that the minor child has been with the 3rd respondent who is none other than his biological father, we are not inclined to entertain the present habeas corpus petition, which is maintainable only in the case of illegal detention and there cannot be any circumstance or situation when the custody of the child with the father can be said to be a case of illegal detention. In ***“Nirmala Vs. Kulwant Singh and others”*** reported in 2024 SCC OnLine SC 758, the Hon'ble Supreme Court has reiterated that the writ of Habeas Corpus in child custody matters is maintainable only when it is established that the child is being detained unlawfully by a person who is not entitled to his legal custody.

5. However, the learned counsel for the petitioner raised a contention



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that the minor child is not knowledgeable enough to decide which parent is better for his welfare and by applying the principle that welfare of the child is the paramount consideration, it would be in the interest of the child that the custody of the child may be given to the mother/petitioner.

6. In Nirmala's case (cited supra), the Hon'ble Supreme Court has also emphasized the requirement of a detailed enquiry regarding the welfare of the minor child and his preference and such exercise could be carried out only in the proceedings under the Guardian and Wards Act, 1890.

7. In *“Tejaswini Gaud and Others Versus Shekhar Jagdish Prasad Tewari and Others”*, reported in (2019) Supreme Court Cases 42, after considering the earlier cases, the Hon'ble Supreme Court has observed thus:

“19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not



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available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the Court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the



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court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus. (Emphasis supplied)

8. Having regard to the above and since the minor child is in the custody of his biological father, this Court is not inclined to decide the issue regarding the custody of the minor child in the present petition as we do not find that the present one is an exceptional case to exercise extraordinary jurisdiction and determine the issue merely based on the affidavits filed by the parties.

9. In the light of the above discussion and finding that the minor child is in the custody of his biological father/3rd respondent which does not amount to illegal detention, warranting issuance of a writ of habeas corpus, this Habeas Corpus Petition is dismissed. However, the petitioner is at liberty to work out her remedy for custody of her minor child by making an



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application under the provisions of the Guardians and Wards Act, 1890 before the competent Court. It is made clear that no opinion is expressed by this Court as regards the custody of the child and the competent Court can decide the issue on merits in the event of any application being filed by the petitioner without being influenced by any of the observations made in this order.

(J.N.B.,J.) (S.S.,J.)
15.09.2025

Index: Yes / No
Internet: Yes / No
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To:

1. The Superintendent of Police,
Office of the Superintendent of Police,
Salem District.
2. The Inspector of Police,
Mecheri Police Station,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

J.NISHA BANU, J.
AND
S.SOUNTHAR, J.
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