



H.C.P.No.1696 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 15.09.2025

CORAM

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

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

H.C.P.No.1696 of 2025

Mrs.Samsunisha

... Petitioner

-VS-

1. The Superintendent of Police,
Karaikal Superintendent of Police Office,
Karaikal, Puducherry.

2. The Inspector of Police,
Karaikal Town Police Station,
Karaikal District, Puducherry.

3. Nowshath Bebum

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the 1st and 2nd respondents to bring the detenu, namely, Ziya, aged about 3 years old D/0 Samsunisha, now under the illegal custody of the 3rd respondent and produce before this Court and to handover the child with the petitioner's custody.



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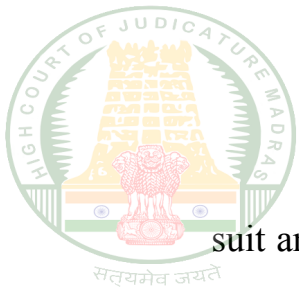
For Petitioner : Mr.C.R.Gokulvisvas
For R1 & R2 : Mr.K.S.Mohandass, PP (Pondy)

ORDER

(By J.Nisha Banu,J.)

This petition has been filed for a direction to the 1st and 2nd respondents herein to produce the body or in person of the petitioner's daughter, namely, Ziya, aged about 3 years, who is now under the illegal custody of the 3rd respondent and and handover her to the petitioner.

2. The case of the petitioner is that the petitioner got married one Mr.Ershath Ahmed and was blessed with a girl baby. Thereafter, matrimonial dispute arose and the petitioner was subjected to harassment for want of more jewels as dowry and she was thrown out from matrimonial home and her husband went abroad to work. While she was residing in her matrimonial home along with her child, the 3rd respondent who is the mother-in-law of the petitioner came to the petitioner and made her to file a suit for divorce under life threat, which constrained the petitioner to file the



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suit and it was decreed *ex parte* in June, 2025. While so, the 3rd respondent along with her family members came to the petitioner's house and forcefully taken away the minor child from the custody of the petitioner, stating that since she got divorced with her son, she is not entitled to have the custody of the child, which prompted the petitioner to lodge a complaint with the police/respondents 1 and 2 seeking to secure the child. As no response was forthcoming, the petitioner has approached this Court by filing the present habeas corpus petition.

3. When the matter is taken up for hearing, the minor girl child, namely, Ziya, aged about 3 years along with the 3rd respondent is produced before this Court by the Police. The petitioner, who is the mother of the minor child, is also present.

4. The petitioner is a muslim woman and admittedly, she is the biological mother of the minor child and her husband who remained *ex parte* in a suit filed for divorce, is working in abroad and the minor child is now with the custody of the 3rd respondent who is the mother-in-law of the



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petitioner.

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5. It is well-settled law that a Writ of Habeas Corpus may be issued to restore the custody of a minor to the parents where they have been unlawfully deprived of it. Ordinarily, child custody disputes are to be addressed under the Guardians and Wards Act, 1890, through a comprehensive inquiry by the competent Court. However, in exceptional circumstances, the questions of custody can be examined within the limited scope of Writ jurisdiction. We are of the view that the present matter falls within such an extraordinary category.

6. As per Mohamedan Law, the mother has the right to the custody (hizanat) of a minor girl until she reaches puberty. A reference in this connection may be made to Mulla's Principles of Mahomedan Law (Nineteenth Edition) by M. Hidayatullah and Arshad Hidayatullah. Section 352 of Mulla's Mohamedan Law, which falls under Part B of Chapter XVIII dealing with "Guardians of the Person of a Minor", provides:



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"352. Right of mother to custody of infant children.

The mother is entitled to the custody (hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty. The right continues though she is divorced by the father of the child, unless she marries a second husband in which case the custody belongs to the father."

7. This is the position about the entitlement to the custody of a minor male child under the Muslim Law. In the present case, the father is not in India and went to abroad and working there and moreover, the couple got separated by way of a decree passed in a suit. Therefore, taking note of these facts and as the minor is a young girl of three years, who needs the mother and her care the most, we are of the view that her welfare can be secured only in the hands of the mother and not the mother-in-law, 3rd respondent herein, who is far less suited to look after the young minor's interest.

8. Accordingly, we allow the Habeas Corpus Petition. The custody of the minor child, namely, Ziya - corpus is ordered to be given to the present



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J.NISHA BANU, J.
AND
S.SOUNTHAR, J.
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petitioner. The 3rd respondent has also handed over the minor child to the petitioner. It is made clear that anything observed in this order will not affect the right of the father of the minor from working out his remedy, if any, before the appropriate forum.

(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.

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