



HCP.No.2808 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

H.C.P.No.2808 of 2024

Vanitha ... Petitioner

Vs

The State of Tamilnadu rep. by,
1. The Commissioner of Police,
Salem City,
Salem.

2. The Inspector of Police,
Ammamet Police Station,
Salem City.

3. Mohan Raj ... Respondents

PRAYER: Petition filed under Article 226 of Constitution of India to issue a Writ of Habeas Corpus, directing the second respondent to produce the petitioner's daughter Sangeetha W/o. Siva, aged 48 years and 1st grand child Divyasri D/o Siva, 9 years before this Court and set them at liberty.



HCP.No.2808 of 2024

For Petitioner : Mr. T. Muruganantham
For Respondents : Mr. R. Muniyapparaj,
Additional Public Prosecutor
for R1 & R2

: R3- not ready in notice

ORDER

(Order of the Court is made by *S.M.SUBRAMANIAM, J.*)

The writ of Habeas Corpus Petition has been instituted to direct the second respondent to produce the petitioner's daughter, Sangeetha, aged about 48 years and grand child Divyasri, aged about 9 years.

2. The marriage between Mr. Siva and the detenu Mrs. Sangeetha was solemnized as per Hindu Rites and Customs. Two daughters born from and out of the wedlock. The first child is aged about 9 years and the second child is aged about 6 years. The petitioner is the first detenu's mother. She states that on 23.07.2024 her daughter and first grand child Divyasri were missing. She searched in the nearby places and not able to secure them. Thus, she filed a complaint with the second respondent /Inspector of Police, Ammapet Police Station, Salem. The second respondent police secured the first detenu and her first daughter



HCP.No.2808 of 2024

Divyasri/second detenue and produced them before this Court. The paternal grandmother of the children are present. Husband Mr.Siva is also present.

3. We have examined the parties. The second child of the first detenue, viz.Kanishka, is brought up by the paternal grandmother and the child is aged about 6 years. Though the second child expressed her willingness to stay along with her elder sister, it seems that she is having affinity with the grand mother since the child is presently under the custody of the paternal grand mother.

4. The custody of the second child with the grand mother probably would have influenced to the second child, who is aged about 6 years. However, the second detenu/first child of 1st detenue, namely, Divyasri, aged about 9 years unhesitatingly expressed her willingness before this Court to stay along with her mother. The first child,Divyasri, aged about 9 years states that her mother is taking care of her and providing all facilities.

5. Section 6(a) of the Hindu Minority and Guardianship Act 1956 enumerates that in the case of a boy or an unmarried girl, the father, and after him,



HCP.No.2808 of 2024

the mother provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. Though in the present case, the second child is aged about 6 years and the first child is aged about 9 years, the children are affectionate to each other and being separated on account of the matrimonial dispute by the elders of the family.

6. Court has to assess the best interest of the children. The father of the children has not filed a case nor filed a complaint before the competent authorities. Therefore, an inference can be drawn that he is not so keen in maintaining the two children. The petitioner, who is the grand mother of the children is claiming the custody of the second child alone. As far as the first child is concerned, even the petitioner has no claim nor sought for a prayer seeking custody. Therefore, the mind set of the petitioner/grand mother and the father is also to be weighed by this Court for the purpose of considering the relief to grant custody to the petitioner, who is the paternal grandmother.

7. This Court is of the considered opinion that father and mother are the natural guardian. Grand mother cannot seek custody of the child, aged about 6 years. The first child, who is aged about 9 years, in clear terms deposed before this



HCP.No.2808 of 2024

Court that she is willing to live along with her mother. Even before the Court, the first child seems to be attached with the mother and she is also willing to live along with the mother and her younger sister. The second child, aged about 6 years, expressed her willingness to join with her elder sister and she says that her sister should come and stay with her. Therefore, it is a natural emotion of a child that she should be allowed to stay along with her sister. In the present case, both are female children and separating the children would affect both the children psychologically. The natural course would be that the mother has to take care of the children and in the present case, the father has not shown any interest by filing petition seeking custody or filed a complaint to secure the minor child. Therefore, the grand mother's interest cannot be considered by this Court. The mother is working and staying along with the first child, Divyasri, aged about 9 years and she has stated that she is capable of maintaining her two children, and she will take care of the children.

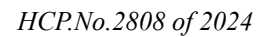
8. Article 51(A) of the Constitution of India enumerates the fundamental duties of the citizen. Article Sub-clause (k) to Article 51(A) of the Constitution of India enumerates that " who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14



HCP.No.2808 of 2024

years". Even the Constitution reiterates the duties of the citizen, as parent or guardian. The parent would be the first choice and in the present case, both the female children must be with the custody of the mother at this tender age for their mental health and good atmosphere.

9. In view of the circumstances and considering the emotions and the wishes of the children and the mother/first detenu, this Court is of the considered opinion that the children cannot be separated and they must be allowed to go together, which would be in the best interest of the children for their future. The grandmother cannot afford to maintain the children after they attain puberty or thereafter. The mother will be the right person to take care of these two children. If at all the father is so affectionate with the children, he is at liberty to negotiate with the assistance of the elders of the family for resumption of matrimonial home or in alternate, he can support the children by providing better education and livelihood. Contrarily, the father cannot indulge in developing a dispute, more specifically, affecting the emotions and life of the children. Mental health of the children is of paramount importance. The child must be allowed to live in a happy atmosphere and at this tender age the children should not be pressurised even in the matter of place of residence. The petitioner and the husband of the first detenu, Mr.Siva, are



10. In view of the facts and circumstances, this Court is inclined to grant custody of both the female children, aged about 9 years and 6 years to their mother Mrs.Sangeetha.

12. With the above observation and direction, this Habeas Corpus Petition



HCP.No.2808 of 2024

stands disposed of.

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[S.M.S., J.]

[M.J.R., J.]

30.01.2025

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

mrp
To

1. The Commissioner of Police,
Salem City,
Salem.
2. The Inspector of Police,
Ammamet Police Station,
Salem City.
3. The Public Prosecutor,
High Court, Madras.



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HCP.No.2808 of 2024

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