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HCP.No.522 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.522 of 2024

D.Madhumithra

... Petitioner

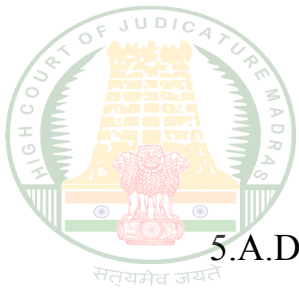
Vs.

1.The State represented by
The Superintendent of Police,
District Police Office,
Panneerselvam Park,
Erode-638001.

2.The State represented by
The Deputy Superintendent of Police,
Superintendent of Police,
District Police Office,
Panneerselvam Park, Erode-638001.

3.The State represented by
The Inspector of Police,
All Women Police Station,
Erode-638001

4.The District Child Welfare Committee,
Erode,
Represented by the Chair Person,
Kollukattumedu, Lakkapuram,
Erode District-638002.



HCP.No.522 of 2024

5.A.Deepa

6.Prakash

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to direct the third respondent to produce the petitioner's minor son, Jai Vikas, aged about 3 years, from the illegal custody of the fifth respondent before this Court and hand over the minor child to the petitioner.

For Petitioner : Mr.Avinash Wadhvani

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind
for R1 to R4

Mr.B.Mohan for R5

R6 - (notice served) No appearance

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner herein claims to be the biological mother of the minor boy child named Jai Vikas, who was born on 07.07.2020 at Erode Emergency Care Hospital. During her pregnancy, she was found to have contracted the HIV virus. According to the petitioner, her father handed over her son to the respondents 5 and 6 herein temporarily. Claiming that she was



HCP.No.522 of 2024

taking Sidha treatment till 24.12.2022, when she had sought for handing over the custody of her son from the respondents 5 and 6, they refused to return custody. She claims to have given a police complaint on 24.12.2022, which was closed since no criminality was involved. Her further complaint to the Child Helpline - 1098 also turned futile since the fifth respondent had represented during the enquiry that she intended to take re-course for retention of the child. Thereafter, on 11.08.2023, the fifth respondent herein filed a petition in G.W.O.P.No.174 of 2023 on the file of the Principal District Judge, Erode under Sections 7 and 8 of the Guardian and Wards Act, 1890, seeking for appointing her as the guardian of the minor child, which is still pending. It is in this background, the present Habeas Corpus Petition has been filed.

2. Though notice was served on the sixth respondent, none appeared on behalf of the sixth respondent.

3. Mr. Avinash Wadhvani, learned counsel for the petitioner submitted that the petitioner herein is the biological mother of the minor child and thus



HCP.No.522 of 2024

has every right to have the care and custody of her child, and that there was no valid adoption in this case. He also submitted that in view of her status as the mother, the refusal on the part of the respondents 5 and 6 to handover her child, would amount to illegal custody.

4.On the other hand, Mr.B.Mohan, learned counsel for the fifth respondent would submit that the petitioner's child was given in adoption to the fifth respondent with her knowledge and consent since she was infected with the HIV virus. Having given the child in adoption and that, this respondent has been taking care of the child since 07.07.2020 till date, and also since the G.W.O.P.No.174 of 2023 filed by them for guardianship over the child is pending, the prayer in the present Habeas Corpus Petition requires to be rejected.

5.Heard the learned counsel on either side and perused the materials on record.



HCP.No.522 of 2024

WEB COPY

6.The fact that the care and custody of the petitioner's child was handed over to the fifth respondent on 07.07.2020 when he was born, with the knowledge and consent of the petitioner herein, is not under dispute. While the petitioner claims that handing over the custody was only temporary, the fifth respondent herein denies the same stating that the child was given in adoption and that she is the lawful guardian of the child and thus, he is entitled for custody. When the very foundational facts of the case have been disputed, this Court, in exercise of its powers under Article 226 of the Constitution of India, would not venture to adjudicate these disputed facts. However, on the same set of facts, a petition has been filed by the fifth respondent herein in G.W.O.P.No.174 of 2023 under Section 7 and 8 of the Guardian and Wards Act, 1980 seeking for guardianship of the minor child, which is pending. The petitioner herein is yet to file her reply statement in the said proceedings.

7.We have taken into consideration the fact that the minor boy has been under the care and custody of the fifth respondent herein right from the date of his birth and his physical custody has never been with the petitioner



HCP.No.522 of 2024

at all. The boy is now aged about 3 years and 9 months. At this age, when he had never lived with the petitioner, it would be in the welfare of the child that his care and custody should be retained by the fifth respondent herein for the present. We would hasten to add here that we have not adjudicated or declared the custodial rights of the fifth respondent herein over the minor child and the issue with regard to appointment of the guardian for the minor child could be decided by the concerned Court on the basis of the evidences before it. In this background, we do not intend to consider the prayer sought for in the present Habeas Corpus Petition.

8. In the result, the Habeas Corpus Petition stands closed with a liberty to the petitioner herein to visit her minor child at the house of the fifth respondent, once a week, preferably during the weekends between 5.00 p.m. to 8.00 p.m., commencing from 01.05.2024, pending final disposal of the G.W.O.P.No.174 of 2023 on the file of the Principal District Court, Erode.

9. By taking into consideration that the petitioner claims to be the biological mother of the minor boy and is seeking for his custody, we deem



HCP.No.522 of 2024

it appropriate that the G.W.O.P.No.174 of 2023 could be disposed of within the time frame. Accordingly, the Principal District Judge, Erode is called upon to dispose of the aforesaid G.W.O.P, within a period of six (6) months commencing from the date on which the petitioner herein files a reply statement.

[M.S.R., J] [S.M., J]

25.04.2024

Index: Yes/No
Internet: Yes/No

Anu
Issue order copy on 30.04.2024

To

1.The Superintendent of Police,
District Police Office,
Panneerselvam Park,
Erode-638001.

2.The Deputy Superintendent of Police,
Superintendent of Police,
District Police Office,
Panneerselvam Park, Erode-638001.

3.The Inspector of Police,
All Women Police Station,
Erode-638001

Page 7 of 8



WEB COPY



HCP.No.522 of 2024

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

Anu

4. The Chair Person,
The District Child Welfare Committee,
Erode,
Kollukattumedu, Lakkapuram,
Erode District-638002.

5. The Principal District Court,
Erode.

6. The Public Prosecutor,
High Court, Madras.

H.C.P.No.522 of 2024

25.04.2024