



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2022

PRESENT

THE HON'BLE MR. JUSTICE B.VEERAPPA

AND

THE HON'BLE MRS. JUSTICE K. S. HEMALEKHA

WRIT PETITION HABEAS CORPUS NO. 77 OF 2022

BETWEEN:

1. MRS. DANIELA LIRA NANY,

Digitally signed by
USHA
NAGENAHALLI
SHANMUKHAPPA

Location: High
Court of Karnataka

...PETITIONER

(BY SRI S. VIVEK REDDY, SENIOR COUNSEL FOR
SMT. BEENA P. K., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
HOME DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU-560001.
REP. BY ITS SECRETARY.



2. THE COMMISSIONER OF POLICE,
COMMISSIONER OF POLICE,
2, ALI ASKER ROAD,
VASANTH NAGAR,
BENGALURU-560051.
3. THE STATION HOUSE OFFICER,
AMRUTHAHALLI POLICE STATION,
AMRUTH NAGAR MAIN ROAD,
SECTOR B, AMRUTHNAGAR,
BENGALURU-560092,
REPRESENTED BY SHO.
4. MR. PRASHANT BANERJEE,

...RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R1 TO R3;
VIDE ORDER DATED 15.09.2022 SRI RAJ PRABHU, ADVOCATE
FOR R4)

THIS WRIT PETITION HABEAS CORPUS IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION IN THE NATURE OF HABEAS CORPUS TO RESPONDENT Nos.1 AND 3 TO IMMEDIATELY TRACE AND PRODUCE THE MINOR CHILDREN MASTER AAHAAN ANTONIO BANERJEE AND MASTER VIHAAN HUMBERTO BANERJEE BEFORE THIS HON'BLE COURT.

THIS WRIT PETITION HABEAS CORPUS COMING ON FOR ORDERS THIS DAY, **B.VEERAPPA J.,** MADE THE FOLLOWING:



ORDER

This habeus corpus writ petition is filed by Mrs. Daniela Lira Nany praying to issue direction to respondent Nos.1 to 3 to immediately trace and produce her minor children - Master Ashaan Antonio Banerjee and Master Vihaan Humberto Banerjee before this Court and respondent No.4 to handover them to her.

2. It is the case of the petitioner that she and 4th respondent got married on 1.3.2018 as per the Hindu rites and rituals at Kilpauk, Chennai which was registered on 2.3.2008 before the Sub-Registrar of Marriage, Perlamet, Chennai, Tamil Nadu as per Annexure-B. Both of them moved to Bengaluru in the month of May, 2018 since respondent No.4 had relocated to Bengaluru for a new career. On 30.1.2019, they were blessed with twin sons viz., Master Aahaan Antonio Banerjee and Master Vihaan Humberto Banerjee. In the month of May, 2022, both along with children returned back to Mexico Country.



3. When the things stood thus, on 20.7.2022 respondent No.4 told the petitioner that he was going along with the children for a walk in the park, but he did not return. Thereafter, the petitioner received a message from respondent No.4 that he would be taking the children back to his Country. Then the petitioner approached respondent No.3 police authorities, but they were not ready to accept the complaint and asked her to seek other remedies. So she approached respondent Nos.1 and 2 – State and Commissioner of Police, on 26.7.2022. Thereafter, the present habeas corpus writ petition is filed for the relief sought for on 6th September, 2022.

4. Respondent No.4 filed his statement of objections denying the averments made in the writ petition contending that he and the petitioner are admittedly husband and wife and have solemnized their marriage on 1.3.2018 as per Hindu rites and rituals at Chennai; They were living together in Bengaluru in their matrimonial home which was taken on lease by him from 2018 itself since the time of their marriage, copies of the rental agreements are produced as Annexures-R-1 to 3; They were blessed with twin sons on 30.1.2019 at Bengaluru and a



copy of the birth certificate produced as Annexure-C. They were living happily in their matrimonial home from the year 2018 till 22.7.2022. It is further contended that in the month of March, 2022, the petitioner/wife conveyed her desire to the 4th respondent that she wanted to go to her hometown with the whole family for a vacation and also to meet the maternal side of the family. So, he being a sole earning member of the family acceded to the petitioner's wish and applied for Tourist Visas for the family to the Mexico Country. It is further contended that the children are now aged about 3 years 8 months and studying in nursery in Bengaluru. Keeping in mind their welfare and future, respondent No.4 through his family members had paid the first installment of the school fees and blocked the seat for both his sons on 1.6.2022. They are currently in the foundational stage of their formal education and have been enrolled in a school located closely to his residence as well as to the current/permanent matrimonial residence of the family in Bengaluru, etc., which is imparting good quality education in Bengaluru and sought to dismiss the writ petition as not maintainable.



5. Both the husband and wife, who are young are fighting for the custody of minor children. Now the mother has approached this Court by filing the present writ petition in the form of habeas corpus. When the issue involved is with regard to welfare of minor children and not consideration of legal rights of the parents, the principle in relation to the custody of the minor children shall be the predominant consideration and the rights of the parties with regard to custody dispute are irrelevant as has been consistently followed by this Court and the Hon'ble Supreme Court. Infact, Sub-section (i) of Section 13 of the Hindu Minority and Guardianship Act, 1956 provides that in appointment or declaration of any person as guardian of a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration. When the Court decides that it is the best interest of the minor to remain in the custody of one parent, the rights of the other parent are bound to be affected. As contemplated under Clause (a) of Section 6 of the Hindu Minority and Guardianship Act, 1956 in case of the custody of a minor boy or girl, naturally guardian is the father, but ordinarily the custody of the minor, who has not completed the age of five years, shall be with the mother.



6. On a conjoint reading of sub-section (1) of Section 13 read with clause (a) of Section 6 of the Hindu Minority and Guardianship Act, 1956, if it is found that the welfare of a minor, whose age is more than 5 years requires that his custody should be with the mother, the Court is bound to do so. In the same way, if interest of the minor which is the paramount consideration requires that the custody of a minor child should not be with the mother, the Court will be justified in disturbing the custody of the mother even if the age of the minor is less than five years. In such cases, the rights of the father or the mother, as the case may be, conferred by clause (a) of Section 6 are bound to be affected.

7. Whenever the Court disturbs the custody of one parent, unless there are compelling reasons, the Court will normally provide for visitation rights to the other parent. The reason is that the child needs the company of both parents. Each case has to be decided on its own facts and circumstances. Though no hard and fast rule can be laid down.



8. While exercising the power to issue a writ of habeas corpus under Article 226 of the Constitution of India dealing with cases of minors brought to India from the country of their native, this Court has reiterated that the paramount consideration is the welfare of the minor child and the rights of the parties litigating over the custody issue are irrelevant. A custody dispute involves human issues which are always complex and complicated. There can never be a straight jacket formula to decide the issue of custody of a minor child as what is in the paramount interest of a minor is always a question of fact.

9. In view of the aforesaid principles and in order to ensure the paramount interest of the children as both of them are already studying and born in Bengaluru out of the marriage solemnised between the petitioner and the 4th respondent at Chennai, this Court suggested for an interim arrangement between the petitioner and the 4th respondent and learned Counsel for both parties used their good offices and filed a joint memo, dated 30.9.2022, duly signed by the petitioner and the



4th respondent and their respective Counsel which reads as under:

"1. The parties hereby agree that the custody of the children will be with the petitioner from Sunday 6.00 PM to Friday 1.30 PM.

2. The parties hereby agree that the custody of the children will be with the Respondent No.4 from Friday 1.30 PM after the lunch of children till Sunday 6.00 PM. Further the respondent No.4 will drop the children at the petitioner's residence on or before 6.00 PM on Sunday.

3. The parties hereby agree that the Respondent No.4 is permitted to visit the children at the petitioner's residence on week days in the evening for two hours only."

10. This interim arrangement is in terms of the joint memo till the aggrieved party either the mother/wife/petitioner or the father/husband/respondent No.4 approaches appropriate forum for the relief either for interim custody/permanent custody.



11. Sri Prashant Banerjee/4th respondent, who is present in person before this Court fairly submits that apart from he providing separate accommodation on a rental basis to his wife/petitioner by paying rents, and also ensured that he would pay another sum of sum of ₹10,000/- (Rupees Ten Thousand only) towards maintenance of his wife and two children. The said fair submission is placed on record.

12. In view of the above, we pass the following:

ORDER

- i) Writ Petition Habeas Corpus filed by the petitioner/wife is hereby disposed off in terms of the joint memo filed;
- ii) It is made clear that by taking advantage of this interim arrangement by a joint memo signed by both parties-4th respondent and petitioner; The petitioner/wife shall not leave the Bengaluru or the Karnataka State with the children without prior permission from the Court, till appropriate interim orders or final order is passed by the appropriate Court;



- iii) At the same time, the husband/4th respondent shall also not misuse this interim arrangement and ensure that cordial atmosphere between himself and the petitioner would be maintained atleast in the paramount interest of the children;
- iv) Both the parties shall not misuse the interim arrangement till appropriate order/ final orders are passed by the jurisdictional Court and will come into operation from today;
- v) Both the petitioner and the 4th respondent shall not give any room for further litigation;
- vi) If any of the parties either the father/4th respondent/husband or mother/petitioner/wife, approaches the Court for the custody of the children, the competent Court taking into consideration the paramount interest of the children shall decide the main matter or any application for interim relief, at the earliest, but



not later than three months from the date of the application;

13. The efforts made by the Sri S. Vivek Reddy, learned Senior Counsel for Smt. Beena P.K., Ms. Sushmitha, Sri Paul learned Counsel for the petitioner; Sri Thejesh P., learned HCGP for respondent Nos.1 to 3 and Sri Raj Prabhu, learned Counsel for respondents No.4 to resolve the dispute in the interest of children are appreciated and the same is placed on record.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Nsu/-