

**(2008) 11 MAD CK 0221**

**Madras High Court (Madurai Bench)**

**Case No:** Habeas Corpus Petition (MD) No. 834 of 2008

Dakshina Moorthy

APPELLANT

Vs

The Superintendent of Police,  
Sivagangai District and Others

RESPONDENT

**Date of Decision:** Nov. 4, 2008

**Citation:** (2009) 1 LW(Cri) 105

**Hon'ble Judges:** R. Subbiah, J; R. Regupathi, J

**Bench:** Division Bench

**Advocate:** P. Thiagarajan, for the Appellant; M. Daniel Manoharan, Additional Public  
Prosecutor for Respondents 1 and 2, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

R. Regupathi, J.

The Petitioner is the father of the detenu by name D. Ajai aged about six years. It is alleged in the affidavit that, after the death of his wife on 20.08.2005, the Petitioner entrusted the custody of his children namely D. Anbu Meenal and D. Ajai, aged about 12 and 6 years respectively, with his Co-brother, sister and brother-in-law since he was working at Dubai. A family arrangement has been made whereby, Rs. 4 lakhs was deposited in the name of his daughter and Rs. 2 lakhs in the name of his son with the State Bank of India, Thiruppathur Branch, towards their educational and other expenditure. It is further stated that when he returned back on 16.07.2008, it was informed to him that his daughter is staying with the grand mother by name K. Alagammal and studying 6th standard in the Government High School at D. Mampatty Village, Eriyoor, Tiruppathur Taluk, Sivagangai District and when he questioned Respondents 3 to 5 about his son/detenu, they refused to inform his whereabouts. Since his efforts to trace his son did not yield any result, the present Habeas Corpus Petition has been filed before this Court.

2. Learned Counsel for the Petitioner submits that the Petitioner returned back to India and settled in D. Mampatti Villaage, Eriyoor, Thiruppathur Taluk, Sivagangai District. Though it has been promised that the 5th Respondent brother-in-law of the Petitioner would take care of the children, they were entrusted with the mother-in-law. Since the Petitioner is the natural guardian of the minor children in the absence of the mother and he needs their custody, the present Habeas Corpus Petition has been filed for production of minor son Ajai and permitting the Petitioner to take custody of both the minor children.

3. Heard the learned Additional Public Prosecutor. The daughter of the Petitioner and his son, the detenu, have been produced before us by the mother-in-law.

4. It is seen that the Petitioner is the natural guardian of the minor children; their mother expired as early as on 20.08.2005 and subsequent to the family arrangement, the children were entrusted with the in-laws of the Petitioner and initially, 5th Respondent/brother-in-law was taking care of the minor children. It is stated that the brother-in-law left for job at Singapore and thereafter, the minor children were taken care of by their grandmother/mother-in-law of the Petitioner namely, K. Alagammal who is aged about 60 years. When the father/ natural guardian is available in India to look after the children and when he needs their custody, it is appropriate that the custody must be entrusted to him. On the earlier occasion, it is the father who deposited Rs. 6 lakhs in the name of the minor children. On enquiry, we find that the Petitioner did not marry subsequently and he is willing to take back the custody of the children so that he can effectively look after them. Looking at the paramount interest of the children and considering the request of the father, who is the natural guardian, we are of the view that the custody of the minor children should be entrusted with the Petitioner.

5. With such direction, the Habeas Corpus Petition is closed.