

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, TIRUVALLUR
PRESENT: Tmt.J. JULIET PUSHPA, B.Sc., M.L.,
Principal District Judge, Tiruvallur

Monday, the 28th day of April , 2025

I.A.2/2025 in GWOP.53/2024
(CNR No. TNTR010015782024)

P. Maniazhagan,

....Petitioner

Versus

1. A. Murugesan,
2. Devagi

.....Respondents

This Petition coming on for final hearing on 16.04.2025 5 in the presence of M/s S. Lakshmi Narayanan, learned counsel for the Petitioner and M/s C. Parkavi, M. Mohanapriya, learned counsel for the respondents, and upon hearing the arguments of both side and upon perusing the material case records and having stood over for consideration till this date, this Court delivered the following:-

ORDER

This Petition filed by the petitioner under Section 12 of Guardians and Wards Act, 1890 to grant interim custody of the petitioner's sons (1) minor. M. Kanish , aged 4 ½ years and (2) minor. M. Dishanth, aged 2 ½ years to the petitioner during vacation holidays from 01.05.2025 TO 31.05.2025

2. **The averments in the Petition filed by the Petitioner are as follows:-**

The petitioner is the petitioner in the main Original Petition praying to

grant custody of his minor sons M. Kanish and M. Dishanth born to the petitioner and respondents' daughter Sadhanapriya. The petitioner is an ITI Fitter and working in private company and earning sufficient to maintain his aged parents and his children. Since the petitioner's wife was working, the children were taken care of by the respondents and they created so many problems for taking care of the child even demanding money. While so, petitioner's wife committed suicide on 27.09.2023 at 8.30 AM and died in the hospital. Thereafter, the respondents came with rowdy elements and had taken away the children, even though based on his complaint and advise of RDO to hand over the children to the petitioner, for which the respondents demanded Rs.10 lakhs. The respondents created scene that the petitioner is a bad person. Respondents also not taking care of the children's requirements. The respondents are acting to the tune of their another daughter and their son in law. The petitioner's mother is aged 70 years old and she is yearning to spend time with the grandchildren. Since she was taking care of the children from their birth. The petitioner filed I.A.1/2024 seeking interim custody during pendency which was allowed on 27.02.2025 and he was granted visitation rights on the first Saturday of every month before DLSA, Tiruvallur. Accordingly, on 01.03.2025, he went to meet his children and spent time. The movement is recovery from distress and sorrow. Hence, this petition is filed to have interim custody of the children from 01.05.2025 to 30.05.2025. His mother is more attached to the children. the petitioner is fully prepared to spend his time with

the children during the interim period of custody. Nothing will be lost to the respondent as the minors is only left with the petitioner who is the natural guardian. Hence, prayed to grant interim custody of the children from 01.05.2025 to 30.05.2025.

3. **The averments in the Counter filed by the respondents in brief is as follows:-**

The respondent admits the marriage and birth of the minor wards. The respondents resist the petition denying all the averments in the petition. Their daughter Sadhanapriya was married to the petitioner on 09.03.2017 and two children were born on 22.06.2019 and 04.03.2021 respectively. After the marriage, the petitioner compelled respondent's daughter to take loan from SBI for Rs.4,50,000/- and Rs.3,00,000/- from HDFC and he had compelled to give dowry of 8 ½ sovereign gold jewels and other articles. Only with the money of the respondent's daughter, the petitioner used to buy everything and also he had harassed the petitioner's daughter and started even spying their daughter checking her mobile phone history, *whatsapp* message, and bank transactions. Even the petitioner's parents did not give proper food to their daughter. Even the petitioner's parents abused verbally their daughter and used to suspect her character. Their daughter told the respondent that she is tolerating all the harassment only for the sake of her children. Even when she met with an accident on coming two wheeler, she was admitted in hospital, but the petitioner or his parents did not care about her. All these put their daughter into mental

agony and pressure and committed suicide on 27.09.2023 which was informed by the petitioner and admitted in hospital. Even in the hospital till she was surviving she was more raged when the petitioner and his parents visited her and at last died. The death of their daughter only due to the ill-effects and abuse and neglect at the hands of the petitioner. The respondent filed police complaint about the death of their daughter for which FIR In Crime No.623/2023 u/s 174 Cr.P.C. was registered and investigation is pending. The children are now studying LKG and UKG in PMR Matriculation Higher Secondary School, Mogappair East, Chennai and they have been regularly sent to school. The children are comfortable with the respondent and the children are more attached with them and does not want to leave the respondents. Respondents have glimpse of their daughter only through her children and they are taking care of the children with utmost care. On 01.03.2025 at DLSA, Tiruvallur on seeing the petitioner the 2nd child got urinated having out of fear and DLSA officials also informed the respondent to take care of the child in the same hall. Only to escape from the criminal proceedings, this petition and the original petition are filed. For the custody of the children, the court has to see only the welfare of the children as paramount consideration and not on mere legal aspects. Hence, prays to dismiss the petition.

4. No oral and documentary evidence on both sides.

5. **Now the point for consideration in this petition is**

Whether this petition to grant interim custody of the minor

children M. Kanish and M. Dishanth to the petitioner from 01.05.2025 to 31.05.2025 as sought by the petitioner is ordered to be allowed or not ?

6. **POINT:**

Heard both side.

This petition is filed by the petitioner/father seeking interim custody of his minor children, M. Kanish and M. Dishanth from 01.05.2025 to 31.05.2025 during the summer vacation holidays.

7. On perusal of records and points putforth by both counsel, it is seen that main original petition was filed by the petitioner against the respondents seeking custody of the his minor sons, M. Kanish and M. Dishanth and directing the respondents to hand over his minor sons for the purpose of future studies. The petitioner is none other than biological father of the above children and the respondents are their maternal grandparents.

8. The case of the petitioner is that the petitioner's wife Sadhanapriya already died on 27.09.2023 and the respondents have taken away the custody the children with them forcibly , thus he filed original petition seeking custody of the children. The respondents refused to permit the children to school and kept under their illegal custody. The respondents are not taking care of the children and the children are also not in good atmosphere. Hence, he filed this petition to give interim custody of the children, M. Kanish and

M. Dishanth pending disposal of the main original petition.

9. Per contra, this petition is vehemently objected by the respondent on the ground that it was only the petitioner never cared the respondent's daughter and only due to the harassment made by him, she committed suicide and the children are under care of the respondents and they are very well attending the school . Further, during visitation of the petitioner to the children on 01.03.2025 they fear of seeing the petitioner.

10. On perusal of records, it is seen that the petitioner has already filed I.A.1/2024 seeking interim custody , which was partly allowed on 27.02.2025 granting only visitation rights to the petitioner permitting him to visit the children on the first Saturday of every month between 2.30 PM to 5.00 PM at the Office of District Legal Services Authority, Tiruvallur. The petitioner now seeks to have interim custody during the summer vacation holidays. While the petitioner states that during the visitation of the children on 01.03.2025, he spent time happily with them, the respondents contend that the 2nd child was scared seeing the petitioner and even got urinated out of fear.

11. Admittedly, the minor children of the petitioner is now in the custody of the respondents/ maternal grandparents. The petitioner is none other than the biological father of the minor children, M. Kanish and M. Dishanth seeking interim custody. The petitioner has obtained already visitation rights to visit the children once in every month. At this juncture, this Court wanted to

assess the mental status of the children, M. Kanish and M. Dishanth and accordingly, interacted with the children in the chamber on 05.04.2025. The 1st child namely M. Kanish was able to identify his father and he is not having any ill-feeling towards the petitioner and he has consent to accompany with his father. As far as the 2nd child M. Dishanth when asked about his willingness, he vehemently refused to go along with the petitioner even after repeated suggestion put forth by this Court. It was also observed from the words and expressions of the 2nd child M. Dishanth that he is not willing to go with the petitioner and they are comfortable with the respondents. But, the 1st child M. Kanish has accepted and willing to go along with his father, the petitioner herein as he has already met the petitioner on 01.03.2025 and had acquaintance with him.

11. Admittedly, there is no adverse remarks upon the petitioner's conduct towards the children.

12. Even though the petitioner is a nature guardian and father of the children, the children are only about 5 years and 3 years old male children who are under the care and custody of the respondents, who is none other than the maternal grandparents. Since the 1st child M. Kanish is willing to accompany along with the petitioner, this Court has no hesitation in giving interim custody of the 1st child M. Kanish with the petitioner during summer vacation. Therefore, this is inclined to allow this petition in respect of the 1st child, M. Kanish.

As far as 2nd child M. Dishanth is concerned, he has vehemently refused to accompany with the petitioner. He is now 3 years old. Though the petitioner is the father and natural guardian of the children, in the matter of seeking custody of the minor children, the paramount consideration is only the welfare of the minor children as held by the Hon'ble Apex Court in **2019(7) SCC 42** (*Tejaswini Gaud and Others Vs. Shekhar Jagdish Prasad Tewari*)

13. Already, the petitioner has the visitation rights over the children. Admittedly, the children are now studying and the month of May 2025 is a vacation period. Since the 2nd child M. Dishanth is not willing accompany with the petitioner, this Court cannot act as against the interest of the child as he is not willing and he cannot be forced to do so merely for the reason that the petitioner is the father and natural guardian. Therefore, there is no ground made out to give interim custody of the 2nd child M. Dishanth to be in custody during the vacation period. Under these circumstances, this Court is not inclined to grant interim custody of the 2nd child M. Dishanth to the petitioner for the purpose sought for.

As far as the custody of the 1st child M. Kanish is concerned, the petitioner seeks for custody of the child from 01.05.2025 to 31.05.2025 for the vacation period. This court is inclined to allow only the 1st child to be in custody of the child for some time while declined the same in respect of the 2nd child M. Dishanth. Therefore, during the interim custody of the 1st child M.

Kanish with the petitioner, the 2nd child M. Dishanth will be with the respondent. Therefore, it is not desirable for the children to be in custody, i.e. with the petitioner and respondent separately for longer period. Therefore, considering the relationship between the petitioner and the 1st child M. Kanish, this Court is inclined to grant interim custody of the child for 7 days from 01.05.2025 to 07.05.2025 with condition.

In the result, this petition is partly allowed . The petitioner is granted with interim custody for 7 days to his minor son M. Kanish with conditions as follows :

- 1. The respondent is directed to hand over the the male child namely M. Kanish (born on 22.06.2019) to the custody of the petitioner for 7 days between 01.05.2025 to 07.05.2025 at the convenience of both parties.**
- 2. The petitioner shall inform the arrangement for the travel of the child for accompanying with him for 7 days well in advance.**
- 3 The respondent is directed to cooperate with the petitioner for sending the child M. Kanish to the custody of petitioner for the above 7 days.**
- 4 Both the petitioner and respondents shall act with best interest of the minor ward.**
- 5. The respondent, during the period of custody of the child shall not give trouble to the petitioner and the child.**

- 6 Both the petitioner and respondent shall act with best interest of the child M. Kanish during the period of custody of the child with the petitioner.**
- 7 The petitioner and the respondent shall ensure that during the period of custody with the petitioner the child M. Kanish should not be subjected to any mental agony.**
- 8 The petitioner is directed to handover the child M. Kanish to the custody of respondent after the completion of 7 days, i.e. on or before 6.00 PM on 07.05.2025 or before 10.00 AM on 08.05.2025.**

This petition in respect of the child M. Dishanth is dismissed. No costs.

Dictated to the Steno-Typist, transcribed by him, corrected and pronounced by me in the Open Court, on this the 28th day of April , 2025

**PRINCIPAL DISTRICT JUDGE
TIRUVALLUR**

Petitioner side witnesses & Exhibits : NIL

**PRINCIPAL DISTRICT JUDGE
TIRUVALLUR**