



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD)No.18667 of 2020

K.Indira

... Petitioner

vs.

1)The Superintendent of Central Prison,
Madurai.

2)The Dean,
Madurai Rajaji Hospitals,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Madamus, directing the 1st respondent to shift the Central Prisoner No.7379 namely, Mr.Krishnan aged 70 years who is the husband of the petitioner from Madurai Government Rajaji Hospital to any Private Hospital at Madurai.

For Petitioner : Mr.Lakshmi Gopinathan

For Respondents : Mr.V.Neelakandan

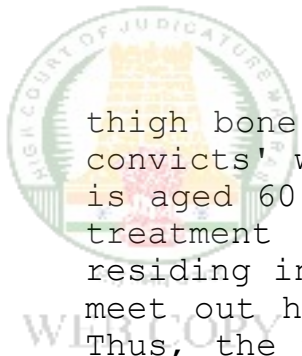
Additional Public Prosecutor

ORDER

The writ petition has been filed to issue a Writ of Madamus, directing the 1st respondent to shift the Central Prisoner No.7379 namely, Mr.Krishnan aged 70 years who is the husband of the petitioner from Madurai Government Rajaji Hospital to any Private Hospital at Madurai.

2.The learned counsel for the petitioner would state that the petitioner's husband Mr.Krishnan aged 70 years was convicted under Sections 7 read with 13(2) of the Vigilance and Anti Corruption Act by the Special Court, Srivilliputtur, in C.C.No.1 of 2005 to undergo 4 years rigorous imprisonment and the same was confirmed by this Court in Crl.A.142 of 2011, against which, the petitioner's husband moved a Special Leave petition before the Hon'ble Supreme Court in SLP.No.7274 of 2019 and the Apex Court has ordered notice with regard to reduction of sentence alone. The petitioner's husband surrendered before the trial Court on 21.01.2019 and he was remanded on the same day.

3.The learned counsel for the petitioner would further state that the petitioner's husband was taking treatment for his heart ailments and asthma and he was not permitted to take generic medicines by the 1st respondent and he took treatment in Madurai Rajaji Hospital on 12th and 13th March 2020. While so, on 09.12.2020, he fell down in Prison and sustained fracture of left



thigh bone and he was admitted in General Ward and then shifted to convicts' ward on 10.12.2020. It is also stated that the petitioner is aged 60 years and her son met with accident and he is undergoing treatment for his mental illness at Chennai and her daughter is residing in U.K. Due to the fracture, the petitioner is not able to meet out his daily needs without the assistance of another person. Thus, the petitioner made a representation to the 1st respondent on 11.12.2020 requesting to shift her husband from Madurai Government Rajaji Hospital to any private hospital at Madurai, and her request was denied orally. Hence, this writ petition.

4.Since the matter was said to be urgent, the matter has been listed today for the instructions of the learned Additional Public Prosecutor.

5.Today, the learned counsel for the petitioner would state that the petitioner's husband may be shifted from Madurai Rajaji Government Hospital to the Private Hospital namely, Vadamalayan Hospital, Madurai.

6.The learned Additional Public Prosecutor on instructions, would state that the respondents do not have any objection for shifting the petitioner's husband to Vadamalayan Private Hospital, Madurai, for treatment.

7.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

8.The Prisoner is also a human being, a legal personality and a natural person and the crime does not reduce a prisoner to a non-person. The detenu / convict / under-trial persons go to prisons, as punishment and not for punishment and deprivation of treatment facility which would amount to imposition of additional punishment. The Constitution of India does not stop with creation of substantive rights, but also provides for enforcement of rights, i.e., it is a remedial right for the enforcement of the substantive rights. Writ literally means a written order. In our country, rights are available not only for the enforcement of fundamental rights, but also for the enforcement of non fundamental legal rights created by various statutes and other laws in force for the time being. So far as the right to get competent medical treatment is concerned, it is a fundamental right guaranteed under Article 21 of the Constitution of India which casts obligation on the State to ensure the right to life which includes the responsibility to preserve life. There is no doubt that the prison authorities had taken enough care to the petitioner's husband to provide treatment at Madurai Rajaji Government Hospital. But from the circumstances stated supra, the petitioner has entertained an anxiety that giving treatment to her husband at a private hospital would be better in order to preserve her husband's life who is aged about 70 years. Even though it is



pointed out that the petitioner's husband is undergoing imprisonment for the corruption charges, the learned Additional Public Prosecutor would state that the respondents do not have any objection to allow the petitioner's husband to take treatment in a private hospital.

9. Under such circumstances, the petitioner's husband is permitted to take treatment in Vadamalayan Hospital, Madurai, at the request of the petitioner. The petitioner shall bear the medical expenses and costs for escort. The 1st respondent/Superintendent of Central Prison, Madurai, is directed to order for shifting the petitioner's husband namely, Krishnan Convict Prisoner-7379 from the Madurai Rajaji Government Hospital to Vadamalayan Hospital, Madurai as requested by the petitioner forthwith, by following the usual procedure after ensuring safeguarding measures in accordance with the Prison Manual and the petitioner's husband shall be taken back to the Central Prison, Madurai, as soon as he is discharged from Vadamalayan Hospital, Madurai, before 06.00 p.m., on the date of discharge.

10. With the above direction, this Writ Petition is allowed.
No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1) The Superintendent of Central Prison,
Madurai.

2) The Dean,
Madurai Rajaji Hospitals,
Madurai.

3) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-25858[F] dated
17/12/2020)

W.P. (MD)No.18667 of 2020
DATED : 17.12.2020

KM(CO)
KB(17.12.2020) 3P 5C