

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7710 OF 2022

MAYURI RAJENDRA SABALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

Mr.S.P.Rathod, Advocate for the petitioners.
Mr.S.G.Karlekar, AGP for the respondent/State.
Mr.A.V.Pandao, Advocate for respondent No.5.

(CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.)

DATE : JULY 26, 2022

PER COURT :

1. The two petitioners are a married couple. Petitioner No.1 is the wife and the petitioner No.2 is the husband, who is in dire need of a surgery for receiving a kidney. He is suffering from CKD of stage V and is presently on maintenance Hemodialysis. He appears to be in the final stage of his disease. Unless the kidney transplantation is done, he would have little hope of survival.

2, We have considered the submissions of the learned Advocates for the respective sides. The learned AGP appears on behalf of respondent

Nos. 1 to 4.

3. It is undisputed that petitioner No.1 wife has volunteered to donate a kidney to her husband/petitioner No.2. The competent Committee has scrutinized the case of petitioner No.1 under the Transplantation of Human Organs and Tissues Act, 1994. Taking into account the consent and the compliance of the statutory procedure, the Committee has permitted respondent No.5 / Hospital to carry out the kidney transplant surgery.

4. The sister of petitioner No.1, namely Aarti Ramdas Kale, R/o Kamathwada, Tal.Karanja, Dist. Washim is alleged to be pressurizing petitioner Nos. 1 and 2 with a demand of Rs.50,000/- as a condition to accord her consent. The petitioners have a telephone recording of such demand, which smells of extortion. Complaints have been lodged by the petitioners with Police Station, Mana, Dist. Amravati, as well as with the Osmanpura Police Station, Dist. Aurangabad.

5. The learned Advocate representing respondent No.5 concedes that there is no provision under any Act that requires the consent of the

sister of petitioner No.1 to be obtained as a precondition for carrying out the surgery. He further submits on instructions that the said sister has also lodged some complaints with the hospital indicating her resistance to the surgery. The learned Advocate concedes that the hospital need not consider the wish of such a sister in view of the fact that the competent committee under the Act of 1994 has considered all relevant factors and has accorded its approval for performing such surgery.

6. In view of the above, we find that the hospital need not be bothered by such a complaint by a person against whom the petitioners have already lodged police complaints stating therein that she is attempting to extort money from the petitioners. Since there is no legal impediment in performing the surgery and as the learned Advocates for the respective sides are united in submitting that there is no legal hurdle for the hospital to proceed with such surgery, we hereby order that respondent No.5 would proceed as per the procedure and by following the medical protocol to perform the surgery for kidney transplantation, at the earliest.

7. With the above directions, this petition is disposed off.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)