

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.788/2022

Prashant Rahi Narayan Sanglikar,
aged 64 Yrs., Occ. Journalist,
R/o 87, Chandrashekhar Nagar,
Hrishikesh, Dehradun, Uttrakhand.

... Petitioner

- Versus -

1. Superintendent, Central Prison,
Amravati Central Prison, Jail
Road Camp Area, Amravati,
Maharashtra 444 602.
2. State of Maharashtra,
through Additional Chief Secretary,
Home Ministry, having office at
Mantralaya, Mumbai.

... Respondents

Mr. Nihalsingh B. Rathod, Advocate for the Petitioner.
Mrs. K.S. Joshi, A.P.P. for Respondent Nos.1 and 2.

CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, JJ.
DATE : 20.12.2022

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. Although learned counsel for the petitioner has expressed his doubt about the opinion given by treating doctor which is reflected in the latest affidavit filed by him i.e. Dr. Vineet Laxmikant Gupta and has, therefore, argued that the petitioner should be given an opportunity to have second opinion from reputed hospital at Nagpur which is run by Dr. Shrikant Mukewar, we find that there is nothing available on record from which any reasonable material can be found for doubting the correctness or otherwise of the opinion given by the treating doctor. The clinical and pathological tests as seen from the affidavit have been conducted and they show normal functioning of internal organs having main role in the digestive system of humans. To put it precisely, liver, pancreas and kidney have been shown to be functioning normally. The opinion further shows that doctor has diagnosed the cause of frequent loose motions which was experienced by the petitioner consistently for several months together in the recent past and has traced it to be indigestion suffered by the petitioner for which purpose some

treatment has been prescribed by the treating doctor. With such opinion on record, which is supported by clinical and pathological examination reports, we do not think that there is anything which has remained to be done by this Court. Even the present health condition of the petitioner has been reported to be better. For these reasons, we are not inclined to accede to the request of learned counsel for the petitioner for he being referred to another hospital for getting the second opinion. At the same time, we may mention here that petitioner would be at liberty to consult another doctor through his relatives in the light of the latest opinion given by the present treating doctor and this can be done by the relatives of the petitioner on the basis of the copy of the opinion already furnished to the learned counsel for the petitioner.

3. Learned counsel for the petitioner puts forward one more point. He submits that in the present case, endoscopy and colonoscopy of the petitioner was necessary, which was not

carried out by the treating doctor. However, it is pointed out by learned A.P.P., some tests were already carried out by the treating doctor and their results being normal, the treating doctor appears to have not considered it necessary to go for endoscopy and colonoscopy of the petitioner.

4. Upon careful consideration of the opinion of the treating doctor, we find that there is substance in the submissions of learned A.P.P. and no merit in the submissions of learned counsel for the petitioner. In the affidavit, which contains opinion of the treating doctor, a reference has been made to the extensive tests carried out by the petitioner. These tests, amongst others, were ultrasound of the abdomen done on two occasions and on each occasion pancreas was found to be normal and also no significant or life-threatening abnormality was found. It is also seen that cardiac investigation had been done and the electro cardio gram and 2 D-echo were normal thereby indicating normal and healthy cardiac function. We are of the view that the

evaluation of digestive system, heart and circulatory system and kidneys (Nephrology and Urology) which was done under the supervision of specialists is indicative of very good efforts taken by the doctor to provide, as far as possible, accurate and effective treatment to the petitioner and, we may say the efforts have borne fruits as the cause has been found in the diagnosis of the doctor, which is of indigestion suffered by the petitioner. It is noteworthy to mention here that inspite of indigestion, the doctor has not found any nutritional deficiency.

5. When the functioning of digestive system, heart and circulatory system and kidneys, with no signs of malnutrition whatsoever or any nutritional deficiency, has been found to be normal, it is quite likely that a treating doctor may, in his wisdom, not advise his patient to go for endoscopy and colonoscopy or both. In such a case, or for a patient like the petitioner, and for that matter, even for this Court, we must leave the aspect of care and treatment of the patient to the efforts and wisdom of the

treating doctor. It is well settled that it is neither for the patient nor any Court to substitute its opinion for the opinion of the expert unless the opinion has been found to be based upon no material whatsoever or is of such a nature that it is impossible to be formed by any medical expert in the facts and circumstances of the case. Then, even when any interference with medical opinion is to be made, there has to be in existence a contrary or different medical opinion based upon some material. Such is not the case here and, therefore, argument canvassed on behalf of the petitioner is rejected.

6. In the result, we find that the prayer made by the petitioner for he being admitted to another hospital or he being referred to another medical expert cannot be granted and the petition stands rejected. Rule is discharged.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)