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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.712 of 2022

Rev.Sr Mariamma
St Ann's convent Uthukottai
Tiruvallur District 662 026.

...Petitioner

Vs.

1.Inspector of Police,
Uthukottai Police Station,
Thiruvallur District.

2.Superintendent of Prisons,
Special Prison for Women (3)
Puzhal, Chennai.

...Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to direct the respondent herein to transfer the remand prisoner from Stanley Hospital, and transfer the same to St.Thomas Hospital, at St.Thomas Mount or any private Speciality hospital at Chennai for immediate medical attention and assistance for her survival at the cost of the petitioner in the above Crime No.1431/2020.

For Petitioner : Mr.N.R.Elango
Senior Counsel for
Ms C.Auxilia Peter

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

The petitioner, who is the first accused in Crime No.1431 of 2020, was arrested by the respondent police on 08.01.2022 for offence under Section 304(ii) IPC.

2.The contention of the learned counsel for the petitioner is that the petitioner is a nun, who was serving as Nurse in Julia hospital, Uthukkottai. On 04.09.2020, the defacto



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complainant's wife Divya was admitted for delivery and she developed delivery pain at about 12.00 noon. The complaint is that sister attached to the hospital Ward informed the defacto complainant that his wife will have normal delivery and informed him not to worry. At about 2.00 p.m., the sister from the delivery ward came out and informed that a girl baby delivered, further, informed that the baby was without any movement. Hence, the baby was sent for scanning. The nurse name is one Mariya. When the defacto complainant further enquired, he was informed that the baby was dead, which was informed about 2.30 p.m. When the defacto complainant insisted that he needs to meet the doctor, who was present during delivery, he was informed that no doctor was available and it was only the nurse, who conducted the delivery. When the defacto complainant questioned, why caesarian operation not done, he was informed that it is a practice in the hospital, only as a last resort, caesarian would be done, otherwise, normal delivery is attempted. The defacto complainant had doubt with regard to the medical negligence of the nurse and further, in the absence of doctor, no delivery could have been conducted by any nurse. Hence, he lodged a complaint. This complaint registered on 05.09.2020 under Section 174 Cr.P.C. The petitioner was called for enquiry and explained that it was a normal delivery. The petitioner being a trained nurse and they are entitled to take care of the normal delivery. The child's death occurred due to cord surrounding the neck of the baby and it was a short cord and resuscitation done (CPR) could not revive the baby.

3.He further submitted that the defacto complainant had earlier taken his wife to the PHC, Katchur, for admission and due to non-availability of doctor, he brought his wife to Julia Hospital. The nurse informed that there is no doctor and regular Doctor Arockiam was taking treatment for chest infection, advised the defacto complainant to take his wife to some other hospital. Since the labour pain aggravated and the defacto complainant's wife was suffering with severe pain, the defacto complainant and his relatives requested the nurse in the hospital to conduct delivery, after informing non availability of a doctor, getting concurrence of the defacto complainant, thereafter only, the delivery process started. Now, the petitioner is being charged for offence under Section 304(ii) IPC is not proper. Be that as it may, as regards the present petition, the contention of the senior counsel is that the petitioner is a cancer patient. Even during remand, she fainted and fell down. The remand magistrate advised the respondent police to take her to the hospital and she was taken to the Government Stanley Hospital, where, the doctor had admitted her as inpatient and gave treatment. Further, the petitioner is a known cancer patient and she took treatment in the same Julia



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hospital from 03.01.2021 to 14.01.2021 as inpatient. She was taken to Dr.Rai Memorial Cancer Institute, Chennai, taken treatment during 06.07.2021 to 20.08.2021, the petitioner was advised to avoid rubbing, Washing and Applying Soap on radiated site for 20 days, Continued supportive / symptomatic medication was prescribed and further asked to come for further advice. The petitioner had also taken treatment at St.Thomas Hospital, where, there were better medical facilities. Further submitted that now the petitioner is discharged from the Stanley Hospital. The Stanley Hospital Doctors have confirmed that the petitioner is suffering from cancer and advised her to continue the medication and also radio and chemotherapy was advised.

4.The Additional Public Prosecutor appearing for the respondents submits that the petitioner is a cancer patient is not in dispute. She was admitted in the Stanley Hospital on 09.01.2022 at about 7.20 p.m. Later she was discharged on 10.01.2022 at 2.00 p.m. The Stanley Hospital Government Doctor confirmed, the petitioner is suffering from cancer and she needed further medication including radio and chemotherapy. In this case, the case has been registered on 05.09.2020 under Section 174 Cr.P.C. and later, it was altered on 04.09.2021 under Section 304(ii) IPC. During this period, the petitioner was called for enquiry. She appeared for enquiry, cooperated, produced all the documents and explained the procedure of delivery and also informed that during delivery, such incidents happen. He further submits that after getting opinion from the Deputy Director of Prosecution, case was altered and for the purpose of investigation, the petitioner was arrested. As regards the health condition of the petitioner, is a cancer patient. He produced the Stanley Hospital discharge summary.

5.This Court, on perusal of the submission of the Senior Counsel and the Additional Public Prosecutor, perused the medical records produced, this case was registered on 05.09.2020 under Section 174 Cr.P.C. and thereafter, the case was altered on 04.09.2021 under Section 304(ii) IPC. The petitioner was arrested on 08.01.2022. During this period the petitioner was taking treatment for cancer. Medical records confirm the same. The petitioner even during remand fainted rushed to Stanley Hospital. The Doctor at Stanley confirmed that the petitioner needs LFT treatment, radio and chemotherapy and to be under medication. She has to appear for further evaluation on 26.01.2022. Radio and Chemotherapy treatment not available in the prison hospital, further petitioner already taken treatment at various hospital. She needs specialised treatment in a hospital where the facilities are available. Further the patient to be comfortable, both physically and



mentally. Cancer is a terminal disease. In view of the same, this Court directs the Superintendent of Prison, Puzhal to transfer the petitioner to St.Thomas Hospital, where, she can be given special treatment. The treatment to be at the cost of the petitioner. As regards the security, assessment can be made by the Superintendent of Prison and necessary guards to be provided at the cost of the state.

6.With the above direction, the criminal original petition is disposed of.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sms

To

1.Superintendent of Prisons,
Special Prison for Women (3)
Puzhal, Chennai.

2.Inspector of Police,
Uthukottai Police Station,
Thiruvellur District.

3.The Public Prosecutor,
High Court, Madras.

+2ccs to M/s.Auxilia Peter, Advocate SR. No.2315

+1cc to M/s.Auxilia Peter, Advocate SR. No.2221

Cr1.O.P.No.712 of 2022

PM (CO)

PR (12/01/2022)