

WPA 14769 of 2023

Lakhi Bibi @ Kulsum Khatun

-vs-

Union of India & ors.

Mr. Debasis Roy

Mr. Subhendu Roy Chowdhury

Ms. Shila Chatterjee

Ms. Ipsita Ghosh

....for the petitioner

Mr. Sk. Md. Galib

...for the State

Mr. Amajit De, Spl PP, CBI

Mr. Sujit Bhunia

...for the respondent nos. 2, 3

This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities, especially the respondent nos. 3 and 9 to take immediate steps for providing adequate and modern technologically advanced treatment at the Tata Memorial Hospital, Mumbai in view of the nature of illness of the petitioner's husband who is an under trial prisoner.

Learned senior counsel representing the petitioner submits follows. The petitioner's husband is an accused in Rampurhat Police Station Case No. 168 dated 22.03.2022 under Sections 302, 120B and 34 of the Indian Penal Code read with Sections 3 and 4 of the Explosive Substance Act. At present, he is in judicial custody in connection with the said case. While in custody, it was detected that he was suffering from cancer. As would be evident from the report filed on behalf of the State earlier, the State made

arrangements for conducting certain tests in this regard at the SSKM Hospital. However, there is no specialized treatment for cancer at the SSKM hospital. Although the petitioner had prayed for treatment at Tata Memorial Hospital, Mumbai, she would not like to press for the same and would pray that necessary treatment of the petitioner's husband may be done at the Tata Medical Center, Calcutta at the expense of the petitioner. Reliance is placed on the decision of the Hon'ble Constitution Bench of the Apex Court reported at Union of India -vs- V. Sriharan @ Murugan and others, (2016) 7 SCC 1 and of the Hon'ble Supreme Court in R.P. Ravichandran -vs- State of Tamil Nadu represented by its Chief Secretary and ors., Criminal Appeal No. 1974 of 2022, decided on November 11, 2022. It was held that for taking a call on the question of remission and commutation of sentence, or for that matter, a question of parole and the like, it is for the prosecuting agency to take steps. The prosecuting agency here is the CBI. That is why the petitioner has approached this Court for a direction upon them, among others.

Learned counsel appearing on behalf of the State submits as follows. In view of the serious nature of ailment from which the petitioner's husband is suffering, the State would not come in the way if a direction is passed to make necessary arrangement by the respective authorities to have the petitioner's husband treated for cancer at the Tata Medical Center, Calcutta.

Learned counsel appearing on behalf of the CBI submits as follows. Since the petitioner is at present lodged at a correctional home while in judicial custody in connection with the present case, it will be for the State respondents to take adequate steps for providing security and transporting the petitioner's husband for treatment to the hospital. Considering the serious nature of ailment, the CBI would not come in the way if an arrangement is made for such treatment of the petitioner at the Tata Medical Center at the petitioner's expenses.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition.

It appears that the petitioner's husband who is in judicial custody in connection with a murder case has been diagnosed with cancer. The State has made arrangements for conducting the tests at the SSKM Hospital. But, the SSKM Hospital does not have the necessary specialized expertise to deal with the issue.

Thus, the prayer of the petitioner that her husband should be treated at their expenses at the Tata Medical Center, Calcutta is not unjustified.

The prosecuting agency being the CBI and the State who are responsible for the custody of the accused have no objection if such treatment is undertaken at the Tata Medical Center, Calcutta at the expense of the petitioner.

In view of the above, I direct the respondent authorities to take necessary steps to have the petitioner's

husband treated for cancer at the Tata Medical Center, Calcutta at the petitioner's cost.

Necessary police protection shall be provided for such purpose and considering the nature and gravity of the parent case, utmost care should be taken to ensure the security of the accused, especially while travelling to and from the hospital.

With these observations, the writ petition is disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)