

24.03.2023
Ct. 5
D/L 19
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WPA 22348 of 2022

Minushree Mishra
-Vs-
Union of India & Ors.

Mr. Subhabrata Datta,
Mr. Jatindra Barik,
Mr. Debashis Sarkar

... for the petitioner

Ms. Ipsita Banerjee

... for the State

Learned counsel for the petitioner relies on a supplementary affidavit, which contains the Medical Board Report of the petitioner's husband dated 13th January, 2023 pursuant to a direction passed by this Court. The Report concludes with a finding that the patient/petitioner's husband is suffering from severe depression with psychotic symptoms. The petitioner's husband has accordingly been advised supervised medication and regular follow-up.

Counsel submits that the petitioner's husband underwent a medical examination on 10th January, 2023, i.e. before the Report of the Medical Board and further that the petitioner's husband was found to be in a precarious physical condition on 13th January, 2023 when the petitioner went to visit her husband.

Counsel relies on Section 103 of The Mental Healthcare Act, 2017, which deals with prisoners with mental illness and submits that the petitioner's husband should be transferred to a nearest facility for care and treatment. It is further submitted that the Presidency Correctional Home, where the petitioner's husband is presently lodged, does not have adequate medical facilities to deal with the particular medical needs of the petitioner's husband.

Learned counsel appearing for the State submits that the petitioner's husband is sufficiently looked after with fortnightly-visits to the Institute of Psychiatry-COE, Kolkata. Counsel also submits that the petitioner's husband is given prescribed medicines on a regular basis for checking the conditions reported by the Medical Board.

Section 103 of The Mental Healthcare Act, 2017 mentions several facts wherein a prisoner with mental illness may lawfully be transferred for care and treatment to a Mental Health Establishment with prior permission of Board, as defined in Section 2(1)(d) of the Act being the Mental Health Review Board constituted by the State Authority under Section 80(1) of the Act. Section 103 read with the 2nd proviso makes it clear that a prisoner, who comes within the scope of Section 103, may be transferred to a facility with prior permission of the Board. It is not a mandatory condition

and requires fulfilment of the conditions mentioned in Section 103 of the Act.

In the present case, a Medical Board of four specialized doctors was constituted to evaluate the mental and physical condition of the petitioner's husband pursuant to the order passed by this Court on 13th December, 2022. The report of the Board mentions that the petitioner's husband suffers from severe depression and psychotic symptoms. The Report advises supervised medication and regular follow-up. There is nothing on record to show that the petitioner's husband is being deprived of regular and supervised medical check-ups or medicines for treating the particular condition mentioned in the Report. This Court also notes the submission made on behalf of the State that the petitioner's husband appeared today for framing of charges before the 2nd Fast Track Court at Bichar Bhavan.

The petitioner's prayer for shifting her husband to the nearest medical facility cannot also be granted for the following reasons:

- (i) The relief claimed in the writ petition relates to a direction on the respondents to constitute a Medical Board consisting of specialized doctors and experts. This has already been complied with.

- (ii) The other prayers relate to providing adequate and continuous treatment to the petitioner's husband. This has also been done.
- (iii) The prayer for consideration of the representation made by the petitioner on 31st August, 2022 is also not relevant since the said representation was made to the Group Commandant, CISF.

The writ petition hence does not contemplate any order for transferring the petitioner's husband to a medical facility for looking after his particular needs. This Court is hence unable to accept the plea made on behalf of the petitioner.

Needless to say, the petitioner can always approach the Court if the petitioner finds any dereliction of duty or care on the part of the Authorities including those within the Presidency Correctional Home. For now, however, the petitioner cannot be granted any further relief.

WPA 22348 of 2022 is accordingly disposed of without any order as to costs.

(Moushumi Bhattacharya, J.)