



W.P(MD)No.7644 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2024

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P(MD)No.7644 of 2024

R.Shanthi

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City, Madurai.

2.The Superintendent of Prison,
Central Prison-Madurai,
Madurai City,
Tamil Nadu.

3.The Dean,
The Madurai Government Rajaji Hospitals,
Madurai City.

... Respondents

(R1 was *suo motu* impleaded vide order of this Court, dated 26.03.2024 and the ranks of the original Respondents are re-arranged accordingly)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first Respondent to shift the Petitioner's husband, namely, R.Ramakrishnan, aged 50 years, remand prisoner No.7765 from the Government Rajaji Hospital, Madurai to the Saravanan Multispeciality Hospital Pvt.Ltd., situated at Narimedu, Madurai, for a better treatment to save his life



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within the time fixed by this Court.

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For Petitioner : Mr.V.Devakumar
For Respondents : Mr.M.Veeranthiran
Government Advocate (Crl.side)

ORDER

The learned Counsel for the Petitioner sought urgent hearing before numbering the Petition. Therefore, the Registry was directed to number it, if it is otherwise in order and bring it in the list as special mentioning case. Accordingly, this Writ Petition is numbered and listed before this Court.

2.The present Writ Petition had been filed by the wife of a remand prisoner facing trial in a sessions case seeking a direction to the first Respondent to shift the Petitioner's husband, namely, R.Ramakrishnan, aged 50 years, remand prisoner No.7765 from the Government Rajaji Hospital, Madurai to the Saravanan Multi-speciality Hospital Pvt.Ltd., situated at Narimedu, Madurai, for a better treatment to save his life.

3.It is the submission of the learned Counsel for the Petitioner that



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the Petitioner was not granted bail and he is facing trial. Prior to his arrest, he was undergoing treatment for AIDS and Thyroid. After his arrest, he was in the prison. During his remand period, he suffered illness for which jail Doctors treated him. Since the condition did not improved, the jail Doctors referred him to Government Rajaji Hospital attached to Madurai Medical College, Madurai. After the admission in the Government Rajaji Hospital attached to Madurai Medical College, the prison authorities informed the Petitioner herein, wife of the remand prisoner to attend him, as the patient requires attendant from the relatives. Therefore, she was attending him. During this period of treatment, at Government Rajaji Hospital attached to Madurai Medical College, he underwent three surgeries. Now, his condition had worsened. He had been transferred to the normal remand block, where, the wife of the remand prisoner, the Petitioner herein, is not permitted to see him and to interact with him. Therefore, the wife of the remand prisoner has approached this Court by filing this Writ Petition seeking a Writ of Mandamus directing the remand prisoner No.7765, R.Ramakrishnan, to shift from Government Rajaji Hospital, Madurai to the Saravanan Multi-speciality Hospital Pvt.Ltd., situated at Narimedu, Madurai for better treatment.



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4.The learned Counsel for the Petitioner submitted that Single Judge of this Court had issued similar direction shifting a patient from Government Rajaji Hospital, Madurai, to Vadamalayan Hospital, Madurai in ***W.P(MD)No.18667 of 2020***, dated 17.12.2020 in ***K.Indira vs The Superintendent of Central Prison and another*** and this Court had held as follows:

“8.The Prisoner is also a human being, a legal personality and a natural person and the crime does not reduce a prisoner to a non-person. The detenu / convict / under-trial persons go to prisons, as punishment and not for punishment and deprivation of treatment facility which would amount to imposition of additional punishment. The Constitution of India does not stop with creation of substantive rights, but also provides for enforcement of rights, i.e., it is a remedial right for the enforcement of the substantive rights. Writ literally means a written order. In our country, rights are available not only for the enforcement of fundamental rights, but also for the enforcement of non fundamental legal rights created by various statutes and other laws in force for the time being. So far as the right to get competent medical treatment is concerned, it is a fundamental right guaranteed under Article 21 of the Constitution of India which casts obligation on the State to ensure the right to life which includes the responsibility to preserve life. There is no doubt that the prison authorities had taken enough care to the petitioner's husband to provide treatment at Madurai Rajaji Government Hospital. But from the circumstances stated supra, the petitioner has entertained an anxiety that giving treatment to her husband at a private hospital would be better in order to preserve her husband's life who is aged about 70 years. Even though it is pointed out that the petitioner's husband is undergoing imprisonment for the corruption charges, the learned Additional Public Prosecutor would state that the respondents do not have any objection to allow the petitioner's husband to take



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treatment in a private hospital.”

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5.The learned Government Advocate (Crl.side) vehemently objected that this Writ Petition is not maintainable before this Bench, as it is to be heard by a Division Bench, since the subject matter relates to prisoner. The learned Government Advocate (crl.side) further pointed out that in the order relied upon by the learned Counsel for the Petitioner, learned Additional Public Prosecutor had not raised any objections, therefore, the learned Single Judge of this Court had ordered shifting of the patient from Government Rajaji Hospital, Madurai to Vadamalayan Hospital.

6.On consideration of the rival submissions, it is found that in this case, the husband of the Petitioner was remanded and denied bail. He is continuously in jail. From the date of the arrest, he is in prison. It is the contention of the wife, who is the Petitioner herein, that her husband was undergoing natural treatment for AIDS. Therefore, he was maintaining the good health. After having arrested and sent to prison, the natural treatment under Ayurvedha and Sidha was stopped. Therefore, the illness had impact on him deteriorating his health, for which, he underwent



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treatment within the jail hospital. Subsequently, since his health had not improved, the Doctors inside the prison hospital shifted him to Government Rajaji Hospital.

7.It is the submission of the learned Counsel for the Petitioner that after shifting the husband of the Petitioner, remand prisoner, to Government Rajaji Hospital Madurai, he had underwent three surgeries. At that time, the Petitioner herein, the wife of the remand prisoner, was directed to attend him in the place of nurse for the patient. Subsequently, after near normalcy of the return of his health, he was shifted to convict block in the Government Rajaji Hospital, Madurai and the Petitioner herein, the wife, was not permitted to see him and interact with him.

8.The learned Government Advocate (crl.side) on instructions of the Respondent submitted that the prison ward, where the Petitioner's husband undergoing treatment, is exclusive a men ward, where, as per the security protocol, women are not allowed.

9.Considering the plight of a prisoner, who was already under treatment before being arrested as AIDS patient and of his choice, who



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was unable to take treatment inside the prison, which had resulted in his deteriorating health resulting in the present situation. Here, within a period two months, the Petitioner's husband remand prisoner, underwent three surgeries in Government Rajaji Hospital. Therefore, his condition till date is not normalcy. When Doctors are available 24x7 in the Government Rajaji Hospital, which is a multi-speciality Government Hospital, the same will not be available in any private hospital.

10.it is to be noted that he order relied upon by the learned Counsel for the Petitioner in W.P.(MD)No.18667 of 2020, which is case different, the husband of the Petitioner's therein is a heart patient. Here, the remand prisoner had underwent three surgeries in short span of two months. Therefore, his condition is pitiable and serious condition. A patient requiring continuous monitor by specialist, particularly, when his status is AIDS patient, there is likelihood of a private hospital refusing him to admit, since patient coming to the hospital refused to be treated by the private hospital, as they are accommodating an AIDS patient. To avoid such situation, the Government hospital, where AIDS patients are also treated, the Government Hospitals are teaching hospital and reputed hospitals in Tamil Nadu, particularly, Government Rajaji Hospital, where



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they can give maximum care. A patient who had undergone three surgeries, within a short period of two months, it will not be safe for the patient and as well as the relatives of the patient to shift him in this situation.

11. Therefore, the Dean, Government Rajaji Hospital attached to Madurai Medical College, Madurai, is directed to ensure the service of the super-specialist as well as specialist Doctors, so that the patient in this case, R.Ramakrishnan, regains normal health at the earliest. For the present, the Petitioner herein wife of the remand prisoner, may be permitted by the first Respondent and the second Respondent as an attendant to the remand prisoner, for which, the patient may be shifted from the convict ward to a ward, where women relatives are permitted. To ensure the same, the Commissioner of Police, Madurai City, is also *suo motu* impleaded, as first Respondent to ensuring safety and protection, as per the requirement of a remand prisoner in the Government hospital. The Dean, Government Rajaji Hospital, shall ensure that best medical care is extended to the husband of the Petitioner, which is a fundamental right to a citizen of this country, particularly, in this case, who happens to be a prisoner and he is not free as an ordinary



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citizen of this country to move according to his choice. Therefore, at this point of time, he is to be given maximum benefit for ensuring the good health. The prayer to transfer of a prisoner is modified considering the plight of the prisoner, who requires continuous monitoring and cannot be shifted to any hospital.

In the result, the ***Writ Petition*** is partly allowed. No costs.

26.03.2024

Internet :Yes/No
Index :Yes/No

cmr

Note: Issue order copy by **27.03.2024**.

To

1.The Commissioner of Police,
Madurai City, Madurai.

2.The Superintendent of Prison,
Central Prison-Madurai,
Madurai City,
Tamil Nadu.

3.The Dean,
The Madurai Government Rajaji Hospitals,

9/10



Madurai City.

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SATHI KUMAR SUKUMARA KURUP, J.

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