

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2021

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CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.20261 of 2021

Mrs.S.....

... Petitioner

vs.

1.The Superintendent of Prison,
District Prison,
Perurani, Thoothukudi District.

2.The State of Tamil Nadu,
Rep.by its Home Secretary,
Saint George Fort,
Secretariat,
Chennai – 9.

...Respondents

(R2 was suo motu impleaded vide
order dated 12.11.2021)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the first respondent to consider the petitioner's representation dated 08.11.2021 and consequently to shift the petitioner's husband from Thoothukudi Government Hospital to Tirunelveli Government Hospital for better treatment and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

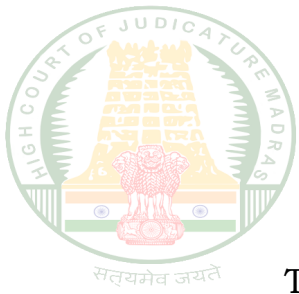
For Petitioner

: Mr.S.Ramasamy

For Respondents

: Mr.T.Senthilkumar,

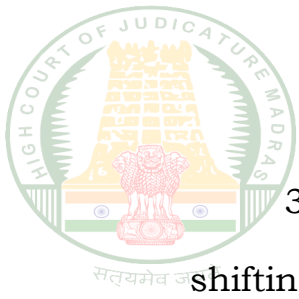
Additional Public Prosecutor



ORDER

The husband of the writ petitioner figures as the first accused in Crime No.93 of 2021 on the file of Thattaparai Police Station, Thoothukudi District. Following the death of one Brahma Rajan, his wife Revathi lodged a complaint leading to registration of the said case for various offences including Section 306 of IPC. Provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and SC/ST (POA) Act, 1989 were also invoked. The case of the prosecution is that the deceased Brahma Rajan had availed loans from the three accused named in the FIR. The accused allegedly were collecting exorbitant interest from the deceased. Unable to bear the debt burden, he committed suicide on 14.09.2021. He left behind a suicide note implicating the three accused.

2.The writ petitioner's husband was arrested on 21.10.2021 and remanded to judicial custody on 22.10.2021. He was admitted in Thoothukudi Government Hospital for treatment on 23.10.2021. He was discharged from the hospital on 03.11.2021 and again re-admitted on 06.11.2021 for treatment. His bail application is still pending consideration and no order has been passed for release.



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3. In the meanwhile, this writ petition came to be filed for shifting the petitioner's husband to Tirunelveli Government Hospital for better treatment. The writ petitioner has pleaded that her husband is suffering from psychiatric ailments, particularly, mental bipolarity. Notice was issued and Shri.G.Chandeesh, IPS., the investigation officer appeared in person. I am happy to record that Shri.T.Senthil Kumar, the learned Additional Public Prosecutor as well as the Investigation Officer assisted the court wholeheartedly and did not treat the proceedings as adversarial.

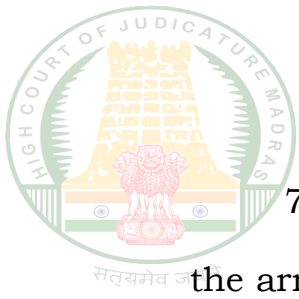
4. The petitioner's husband has been taking treatment in Sneka Mind Care Institute, Tirunelveli since 2019. The treatment records have been produced before me. I heard the petitioner also in person. She told me in the open court that her husband has to be persuaded to take nine tablets per day. I am more than satisfied that the petitioner's husband is suffering from mental illness. However, the police as well as the prison authorities were not aware of his mental condition. And that is why, he was treated like a normal accused. Before producing him for remand, he was medically examined. The proforma report certifies that he was fit for remand. Interestingly, the duty doctor who examined the accused is an ENT Specialist. To the questions as to whether the accused is suffering from any illness or is under medication, the answers have been noted in the negative.



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5. When the remand prisoner is mentally ill, his condition can be ascertained only from his family members or those who have been taking care of him. No purpose will be served by posing questions mechanically to the concerned person himself. Those who have even a passing acquaintance with such matters know that the patient is often in the denial mode. The patient has to be cajoled into submitting to treatment protocol.

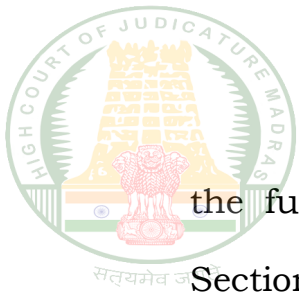
6. Section 20(1) of the Mental Healthcare Act, 2017 states that every person with mental illness shall have a right to live with dignity. Construed in the light of Article 21 of the Constitution of India, the expression “every person” would obviously include an arrestee/remand prisoner too. In the decision reported in **(2019) 7 SCC 1 (Accused X vs. State of Maharashtra)**, the Hon'ble Supreme Court had held that the aspiration of the aforesaid Act is to provide mental healthcare facility for those who are in need including prisoners and that the State governments are obliged under Section 103 of the Act to set up a mental health establishment in the medical wing of at least one prison in each State and Union Territory so that prisoners with mental illness may ordinarily be referred to and cared for in the said mental health establishment.



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7. It is the duty of the State to address the special needs of the arrestee/remand prisoner who is mentally ill. It is an axiomatic proposition which can stand independently without being propped up by any precedent. It is heartening to note that the parliament consciously incorporated Chapter XIII in the Mental Healthcare Act, 2017 setting out the duties of police officers and the magistrates in respect of persons with mental illness. Section 100 to 105 of the Act are meant to be invoked in favour of the mentally ill prisoners.

8. Section 100 of the Act mandates every police officer in charge of a police station to take under protection any person whom the officer has reason to believe has mental illness and is incapable of taking care of himself. The expression “reason to believe” warrants a purposive construction. Otherwise, a police officer arresting a mentally ill person can casually take the stand that the accused appeared to him to be a normal person. The police officer is obliged to undertake a basic enquiry. He has to find out from the person on whom the intimation of arrest is served as to whether the accused is a normal person. The duty doctor examining the accused must satisfy himself that he is not suffering from any mental illness before certifying that he is fit for remand. The remanding magistrate is under an equal obligation. Only then



the functions and responsibilities cast on the authorities under Section 100 to 105 of the Mental Healthcare Act, 2017 can be discharged.

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9. The requirement mentioned above will not be difficult to comply with. In ***D.K.Basu vs. State of West Bengal (1997) 1 SCC 416***, it was directed that the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The police are also under an obligation to notify the next friend or relative of the arrestee if they live outside the district or town. Such intimation must be given within a period of eight to twelve hours after the arrest. The arrestee should be medically examined. Hitherto the focus is only on the body of the arrestee. If there are any major or minor injuries present on the body, it must be recorded. Now, there is an expansion of the framework of human rights. The mental wellness of the arrestee should also be noted. If he or she is found to be mentally ill, the provisions of the Mental Healthcare Act, 2017 will automatically get attracted. The police, the duty doctor and the judicial officer concerned have a positive obligation to perform. They must apply their mind specifically and

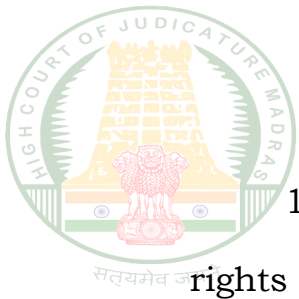


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record their satisfaction that the arrestee is not mentally ill. If they find indications of mental illness, then, the statutory procedure will have to be adopted.

10.It is time the State revises the protocol regarding medical examination of the arrestees. The proforma for health screening of prisoners must contain a specific column as regards the mental well being of the arrestee. That column cannot be filled up after posing a formal question to the arrestee. The duty doctor must observe independently and gather inputs from the arrestee's next friend or relative.

11.The petitioner's husband is suffering from bipolarity. A person having bipolar disorder will appear to be normal. Only his caregivers will know how due to mood swings the behavior can alter. Geetanjali Mehta in “Crossing Over from Mental Illness to Mental Wellness” quotes the song “The cup of life” composed by Ricky Martin for 1998 FIFA World Cup Soccer tournament. The line “the feeling in your soul is going to take control” captures the mood in a manic episode; when the person feels the heat, he thinks the world is at his feet. Such persons will have to be under medication so that things do not spin out of control.



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12.The Leaflet magazine recently carried an article on the rights of the prison inmates who suffer from disability. It sheds light on the problem of non-availability of public interpreters in prisons in Uttar Pradesh to converse with their legal counsel. The author Mohd.Kumail Haider explains as to how it is in violation of the prisoners' fundamental rights as well as the nation's international obligations. Article 17 of the United Nations Convention on the Rights of Persons with Disabilities states that “every person with disabilities has the right to respect for his or her physical and mental integrity on an equal basis with others”. India signed and ratified the said convention in 2007. Article 15(2) of the Convention places an obligation on the State to protect persons with disabilities from cruel, degrading or inhuman treatment and punishment. If a person with special needs is denied the requisite facilities and amenities, that would certainly amount to cruel and inhuman treatment. For instance, a person with parkinson's disease may not be able to hold a tumbler and he may require a sipper to drink. If he is denied this basic facility, that would certainly constitute cruel and inhuman treatment.

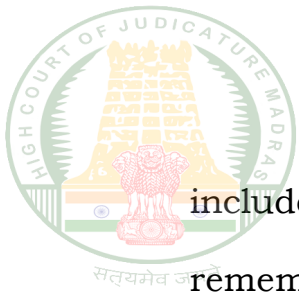
13.In ***Sunil Batra v. Delhi Administration (1978) 4 SCC 494***, it was held that prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed and



that prisoners are also persons and that fundamental rights do not
flee the prison as he enters the prison although they may suffer
shrinkage necessitated by incarceration.

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14. Chapter XIII of The Mental Healthcare Act, 2017 envisages that the authorities named in the Chapter have duty to ensure that persons with mental illness are not neglected. Denial of medical facilities to such persons would certainly constitute neglect within the meaning of the statutory provisions. Section 102 of the Act states that when any person with mental illness is brought before a magistrate, the magistrate is expected to obtain an assessment in respect of his mental health from a competent professional. From this single provision, one can safely infer that the remanding magistrate cannot afford to be mechanical. He has to satisfy himself that the person produced for remand is not suffering from mental illness. If the assessment indicates that the person is suffering from mental illness, then, the magistrate has to follow the procedure set out in the statute. Section 30 of the Prisoners Act, 1900 sets out as to how the lunatic persons are to be dealt with. This provision applies to any person detained or imprisoned under any order of any court. Of course, the expression used is “unsound mind”. This statute was enacted 120 years ago. Therefore, this term has to receive an expansive interpretation to



include persons with any kind of mental illness. It is necessary to remember that Chapter XIII of the Act covers the prison authorities also within its purview.

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15. Psychiatric ailments are ticking bombs. They lie beneath the surface. Unless they manifest themselves in a concrete manner in the behavior and conduct of the patient, one is hardly aware of it. Every police officer and judge should read Jerry Pinto's "A book of Light : When a Loved One Has a Different Mind". It is a collection of thirteen stories from people who recount their lives with loved ones who have had mental illnesses. When the writ petitioner broke down before me while narrating her husband's condition, I could really empathize. Every stakeholder should also watch the film "A Beautiful Mind" based on the book with the same title by Sylvia Nasar. It is a biography of John Nash, the American mathematician who won Nobel Prize. One then will know what is depression, what is schizophrenia and what is bipolar disorder. Time has come to conduct awareness programs in police training academies and judicial academies to sensitize the officers concerned.

16. The petitioner's husband has been receiving treatment at Tirunelveli. It appears that the facilities at Thoothukudi



Government Hospital are not sufficient. That is why a request has been made for transferring the prisoner. No exception can be taken to this request. The respondents will take immediate steps for shifting the petitioner's husband to Tirunelveli Medical College and Hospital for the purpose of receiving better treatment. The writ petition is allowed. I make it clear that the scope of this writ petition is confined to upholding the rights of the arrestee having special needs. It has absolutely no bearing on the investigation. That will proceed in accordance with law.

16.11.2021

skm

To

- 1.The Superintendent of Prison,
District Prison,
Perurani, Thoothukudi District.
- 2.The Home Secretary,
Saint George Fort,
Secretariat, Chennai – 9.



G.R.SWAMINATHAN, J.

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