

The High Court of Madhya Pradesh
WP 1751/2019
Ramkrishan Sharma vs. State of MP & Ors.

Gwalior, dtd. 28/01/2019

Shri Haresh Kumar Agarwal, counsel for the petitioner.

Shri BM Patel, Govt. Advocate for the respondents/ State.

This petition under Article 226 of the Constitution of India has been filed, complaining the non-consideration of the representation of the petitioner despite direction given by this Court by order dated 07/12/2018 passed in Writ Petition No.27577/2018, and has sought following reliefs:-

- "**7.1.** A direction may kindly be given to the respondents to shift the brother of the petitioner from General Ward to Special Ward as he is previously admitted in special ward;
2. Further direction may kindly be given to the respondents to consider the representations annexure-P-1 within stipulated period, if any charge is due against the petitioner, so directed the petitioner to deposit the same;
3. Any other relief which the Hon'ble Court deem fit in the facts and circumstances of the case may kindly be granted to the petitioner."

It is submitted by the counsel for petitioner that the brother of the petitioner, namely, Dr. B. K. Sharma was running a Shelter Home in the name and style of "Snehalaya". It was found that the Chowkidar of the said Shelter Home, had committed rape on a mentally retarded girl staying in the said Shelter Home as a result of which, she became pregnant and abortion was done forcibly and fetus was burnt on the orders of the brother of the petitioner.

The copy of the FIR has been annexed as Annexure P2. On the basis of the said FIR, the brother of the petitioner has also been arraigned as an accused in Crime No.170/2018 registered at Police Station Biloua, District Gwalior.

According to the petitioner, the condition of the brother of the petitioner was precarious, therefore, he filed a Writ Petition No.27577/2018 before this Court on the allegation that although the brother of the petitioner requires immediate medical attention, but the jail authorities are not referring the brother of the petitioner to the Hospital for the reason that there is shortage of staff due to elections. The said writ petition was disposed of by order dated 07/12/2018 with the following observation:-

"Under such circumstances, it is directed that respondent No.3 shall take immediate action on the representation (Annexure P/3) filed by the petitioner and if it is found that brother of the petitioner requires medical attention, he shall be referred to J.A. Hospital for treatment forthwith without further loss of time.

It is made clear that this Court has not expressed any opinion on merits of case."

After the order dated 07/12/2018 was passed by this Court, the brother of the petitioner was shifted to JA Hospital, Room No.13 and requisite fee was also paid by petitioner from time to time towards charges of Special Ward. Some media persons highlighted this fact and looking to the news clippings, the brother of the petitioner has been shifted to General Ward on 13/01/2019. Thus, this petition has been filed, seeking a direction to the

respondents to shift the brother of the petitioner from General Ward to Special Ward.

During the arguments when a specific question was put to the counsel for the petitioner about the nature of diseases with which the brother of the petitioner is suffering, then it was replied by the counsel for the petitioner that the brother of the petitioner is suffering from hypertension, anemia and diabetes. A question was put to the counsel for the petitioner that whether the hospitalization of a patient suffering from above diseases is essential or not ? In reply to the said question, the counsel for the petitioner kept quite. When he did not reply for minutes, then this Court under the impression that the counsel for the petitioner has no answer, proceeded further with the case. However, it was enquired from the counsel for the petitioner as to why the brother of the petitioner against whom serious allegations have been made, wants to get himself shifted to Special Ward in the Hospital, then except by saying that the brother of the petitioner has come from abroad, the counsel for the petitioner could not point out any good reason for keeping the brother of the petitioner in the Special Ward. Whether it is necessary to keep the brother of the petitioner in the Hospital or not, is also a very serious question because the counsel for the petitioner could not point out any serious disease, warranting admission of the brother of the

petitioner in the Hospital itself.

Be that as it may.

So far as this Court is concerned, it has no expertise on medical side. It is for the doctors to decide that whether the brother of the petitioner is required to be kept in the Hospital or not ? Further, this discretion of the doctors should not be utilized for giving an exceptional treatment to a patient, who is in custody because of serious allegations. Every under-trial is entitled for treatment. When an under-trial can be given treatment in the jail itself, then for the sake of convenience of said under-trial, it is not required that he should be kept in the Hospital.

The counsel for the petitioner has failed to point out as to why it is necessary for the jail authorities to keep the brother of the petitioner in the Hospital. Therefore, it is directed that the doctors shall review the health condition of the brother of the petitioner after every fifteen days and would give a specific finding with regard to necessity of keeping the brother of the petitioner in the Hospital. The doctors are also directed to inform the jail authorities about the health condition of the brother of the petitioner, as well as about the necessity of keeping him in the Hospital. The shortage of beds in the Hospital is well known and a bed cannot be kept occupied merely because the under-trial does not want to remain in jail. The health issues should not be made a

tool for staying outside the jail, as unnecessary occupation of beds in the Hospital would deprive another deserving patient from treatment in the Hospital. Thus, the doctors must disclose as to why the brother of the petitioner is required to be hospitalized for the treatment of hypertension, anemia and diabetes. All the periodical recommendations of the doctors shall be forwarded by the jail authorities to the CJM, Gwalior or to the Committal Court or to the Trial Court with the report of the Superintendent of Jail, as to whether the treatment of the brother of the petitioner is possible in the jail or not ? It is further directed that as soon as the doctors come to a conclusion that hospitalization of the brother of the petitioner is longer required, then he should be immediately shifted to the jail, and the jail authorities shall ensure that proper treatment is given to the brother of the petitioner in jail.

As no case is made out for directing the doctors to transfer the brother of the petitioner to a Special Ward, therefore, with the aforesaid observation, this petition is **finally disposed of.**

(G. S. Ahluwalia)
Judge