

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3090 OF 2021

Nirmala Kumari Uppuganti
Aged : 60 years,
Indian Inhabitant,
R/o. Kondapavuluru Village,
Gannavarram Mandal,
Krishna Village,
Andhra Pradesh-521101
Currently incarcerated at
U.T. No. 169,
Byculla District Prison,
Mumbai-400008
presently incarcerated at
Byculla Women's District Prison
Mumbai – 400 008.

.... Petitioner

Versus

1. State of Maharashtra
Through Superintendent,
Byculla District Women Prison,
Byculla, Mumbai 400008.

2. National Investigation Agency,
Through NIA Mumbai,
7th Floor, Cumballa Hill Telephone
Exchange, Peddar Road, Mumbai -26.

....Respondents

Ms Payoshi Roy a/w. Ms.Chandni Chawla i/b Dr.Yug Mohit
Chaudhary for petitioner.

Mrs. S.D. Shinde, APP for State.

Ms. Aruna Pai, Special Counsel for NIA.

Dr. Nivedita S. Kinalekar, Medical Officer, Mumbai District
Women's Prison, Byculla.

Mr. Shivaji Jadhav, Sr. Jailor, Mumbai District Women's Prison,
Byculla.

**CORAM : S. S. SHINDE &
N.J. JAMADAR, JJ.**

Reserved for Order on : 7th September 2021.

Order pronounced on : 9th September 2021.

ORDER :

1. The petitioner, who is an undertrial prisoner, has instituted this petition under Article 226 of the Constitution of India to direct the Superintendent, Byculla District Women Prison, Byculla, wherein she is lodged, to shift her from Byculla Prison to Shanti Avedna Sadan, a hospice care centre, or any other appropriate hospice institute as she is terminally ill due to cancer. Additional and ancillary reliefs like directions for continuation of treatment at TATA Memorial Hospital, facilitation of communications and meetings with Satyanarayan Rani, her husband and co-accused, who is lodged in Arthur Road Central Prison, and lawyers, are also sought.

2. The facts which bear upon the prayers in the petition can be summarized as under :

(a) The petitioner was initially arraigned in C.R. No.19/2019 registered with Purada Police Station, Gadchiroli for the offences punishable under sections 302, 352, 143, 147, 148, 149, 120B, and 427 of the Indian Penal Code, 1860 ('the Penal Code'), sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act,

1967 ('UAPA') and sections 4 and 5 of the Explosive Substances Act, 1908 and sections 5 and 28 of the Arms Act, 1959. The petitioner came to be arrested on 11th June 2019 in the said crime. Subsequently, National Investigation Agency ('NIA') took over the investigation and re-registered the crime at, FIR No. 2/2019, on 25th June 2019. Eventually, on 4th December 2019, NIA filed charge-sheet against the petitioner and co-accused under sections 302, 353, 120B, 121, 121A, 147-149, 427 read with 34 of the Penal Code, sections 16, 17, 18, 18B, 20, 38, 39 and 40 of UAPA, and sections 3, 4 and 5 of Explosive Substances Act. The gravamen of indictment against the petitioner and the co-accused is that they are the members of banned organization Communist Party of India (Maoist) and killed 15 security personnel and a driver in an explosion carried out by them on 1st May 2019.

(b) The petitioner claims that she was diagnosed with Breast Cancer in the month of September 2018. When she was arrested, she was undergoing the cycle of chemotherapy. Over a period of time, prognosis of the

disease has aggravated and the condition of the petitioner has worsened. The CT scan reports dated 3rd May 2021 and 12th May 2021 indicate that the cancer has spread to other organs. The CT scan report dated 15th July 2021 reveals that multiple stable metastatic sclerotic lesion are seen over vertebral, pelvic, both femur, sternum and bilateral humeral head. On 20th July 2021, in brain CEMRI, the following impressions were noted :

“Suspicious nodular pachymeningeal enhancement along with bilateral parietal lobes with suspicious calvarial lesions as described completed pall RT to calvarial mets and left humerus last date on 9/7/2021 also new onset liver mets.”

(c) The petitioner avers that multiple requests were made to the Superintendent, Byculla District Women Prison to provide audience to the lawyers of the petitioner and the necessary facilities to manage the pain and suffering of the petitioner. Byculla District Women Prison is equipped neither with facilities nor personnel competent to take care of the petitioner, who is in such an advanced stage of cancer. Hence, this

petition to direct the Superintendent, Byculla District Women Prison-respondent No.1 to shift the petitioner to a hospice care institution to attend to the petitioner for specialized palliative care and nursing.

3. In the backdrop of the aforesaid nature of the petition and the documents annexed with it, at the outset, we called upon the learned counsel for the petitioner to state as to whether the petitioner seeks the relief of bail on medical grounds. It was categorically submitted that the petitioner restricts the prayer to facilitate palliative care and does not press for bail. The petitioner amended the petition by incorporating averments to the effect that since there is nobody to look after her, except her husband, who is also incarcerated at Arthur Road Central Prison, the petitioner is not in a position to arrange for sureties, residential facility in Mumbai or make any other necessary arrangement.

4. In the aforesaid setting of the matter, we thought it appropriate to direct the authorities to have the petitioner examined by a panel of senior doctors at Tata Memorial Hospital, on 3rd September 2021. A report submitted by the panel of three specialists is tendered for the perusal of the Court. In the peculiar

circumstances of the case, we deem it appropriate to extract the report in extenso :

“This is to certify that Mrs.Nirmalakumari Upparganti Subrao, registered as a known case of breast cancer at Tata Memorial Hospital, Mumbai on 5.9.2019. She was diagnosed to have breast cancer in the year 2018 elsewhere. She is allergic to diclofenac, sulfa drug and has had history of angioedema. She is also a known case of hypertension, compromised heart function (LVEF 35%) for which she underwent Coronary angiogram in GMC Nagpur – No significant findings in the angiogram. Patient does not give any history of stenting of coronary arteries and no details available regarding the same. When she presented to Tata memorial hospital in 2019 she had already received 8 cycles of chemotherapy (4 cycles of EC + 4 cycles of 3 weekly Paclitaxel) at a centre outside last date 21.3.19. She had also received palliative radiotherapy to her bone metastasis and was on oral endocrine therapy (Aromatase inhibitors), + Inj Zolendronic Acid. A PET CECT done on 29.8.19 showed – non FDG avid bilateral lung nodules suspicious of metastasis along with multiple skeletal metastasis to sternum, C2, C5, D4, D8, D9, L1, L2 and L4 vertebrae along with Right sacral ala and bilateral iliac blades. Biopsy of the tumour showed invasive pleomorphic lobular carcinoma grade III, ER 8+/ PgR negative and Her2neu 2+. She was treated with palliative intent radiotherapy and endocrine therapy and has had multiple radiotherapy sessions. On palliative intent treatment she showed progression of disease to Liver (USG report 21.7.21) and probably brain (Suspicious nodular pachymeningeal enhancement along bilateral parietal lobes with suspicious calvarial lesions seen in MRI dated 1.7.21). At present, patient is fully conscious, well oriented to time, place and person. Patient comprehends well and provides major details about ongoing treatment. Patient is ECOG Status 1, moderately built. Vitals-normal. On local examination – Left cicatrized breast fixed to chest wall and axilla. Disease extending superiorly upto clavicle, inferiorly upto inframammary fold, laterally upto posterior axillary line, medially crossing midline. Skin nodule present near the axilla. Axillary nodes cannot be palpated due

to cicatrization. Supraclavicular fossa has hard fixed nodes.

Right breast, Axilla, supraclavicular fossa is normal Systemic examination – no major significant finding. Patient has been planned for 12 cycles of weekly Paclitaxel based chemotherapy (has already received 4 cycles)

Opinion-Patient is terminally ill in view of metastasis to liver, bones, lungs and probably leptomeninges. She has been advised to continue rest of chemotherapy and also a repeat skin biopsy for immunohistochemistry for possible use of targeted therapy.”

(emphasis added)

5. The aforesaid report makes it abundantly clear that the disease has spread to multiple organs from the primary site of cancer. It indicates that on palliative intent treatment, the petitioner showed progression of disease to liver and probably brain. The medical team has opined that the patient is terminally ill in view of metastasis to liver, bones, lungs and probably leptomeninges. The petitioner has been advised to continue rest of chemotherapy and also a repeat skin biopsy for immunohistochemistry for possible use of targeted therapy. The medical team has opined in clear and explicit terms that the petitioner is terminally ill.

6. In the light of the aforesaid material especially the medical reports, we have heard Ms. Payoshi Roy, the learned counsel for the petitioner, Mrs.S.D. Shinde, the learned APP and Mrs. Pai, the

learned Special Counsel for NIA.

7. The thrust of the submissions of Ms. Roy was that since the petitioner is terminally ill and the cancer has afflicted vital organs of her body, including brain, it has become extremely difficult for the petitioner to even move from one place to another. In such circumstances, the petitioner cannot be made to suffer unbearably for want of bare minimum facilities at Prison, which are required to attend to a patient suffering from non-terminal disease, much less, the patient like the petitioner. It would therefore be necessary to shift the petitioner to a hospice institute where the specialized palliative care is provided by trained staff. Emphasizing the right to live with dignity, even when a person is suffering from terminal illness, Ms. Roy would urge that keeping the petitioner in Byculla Prison would be in complete negation of her right to life.

8. Mrs. Shinde, the learned APP would urge that the Superintendent, Byculla District Women Prison, respondent No.1 does not dispute that the petitioner is suffering from cancer. However, the authorities are taking requisite care of the petitioner. Treatment is being provided to her at Tata Memorial Hospital, which is one of the premier cancer care institutions in India. Thus, the prayer to shift the petitioner to hospice centre is not justifiable.

A submission was sought to be advanced that, apart from the prison staff, the co-inmates of the petitioner are taking care of the petitioner inside the prison.

9. We have given our anxious consideration to the submissions advanced across the bar. We have extracted the report of the team of experts of Tata Memorial Hospital, in extenso, on purpose.

10. Indubitably, the petitioner had been diagnosed with cancer in the year 2018. She is registered as a known case of breast cancer at Tata Memorial Hospital on 6th September 2019. Sporadic treatment has been provided to the petitioner. There has been a rapid prognosis of the disease. The medical team found that there is metastases to liver, bones, lungs and probably leptomeninges. Cancer has probably afflicted the petitioner's brain as well.

11. The aforesaid prognosis of the disease is usually associated with excruciating and unbearable pain and suffering. At this situation in life, in which the petitioner finds herself, the necessity of palliative care and nursing can hardly be over emphasized. Since the medical team has opined in no uncertain terms that the petitioner is terminally ill, which implies remote possibility of cure, in addition to the treatment which is planned, namely weekly cycles of chemotherapy, palliative care remains the viable course of

action. The curative treatment is a part of the response to cancer. At an advanced stage, palliative care to minimize the pain and suffering, to the extent possible, is indispensable. The petitioner has a legitimate right to expect palliative care and nursing.

12. Without reflecting upon the facilities at Byculla Prison, which are being provided to the prisoners, we are of the view that those facilities may not be adequate and effective to provide the requisite palliative care and support to the petitioner, at this stage. The submission on behalf of respondent No.1 that the prison staff and co-inmates of the petitioner are taking care of the petitioner is required to be appreciated in the light of the fact that the specialized care and treatment, which the petitioner requires at this stage, where the disease has spread to multiple vital organs, can only be provided by the trained and professional medical care providers.

13. Undoubtedly, the petitioner is arraigned for grave offences. Yet, in the peculiar facts of the case, especially having regard to the serious medical condition of the petitioner and the fact that she is stated to be terminally ill, absence of a provision of requisite palliative care and support would impinge on her right to life with dignity. It is trite that right to life guaranteed to every person by

Article 21 of the Constitution is a basic postulate of human right. A prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being, and even when lodged in the jail, he is not deprived of his right to life guaranteed to him under Article 21 of the Constitution, which includes the right to obtain medical treatment. A prisoner cannot be deprived of health services as it would violate the guarantee conferred under Article 21 of the Constitution of India.

14. We are therefore persuaded to direct the authorities to shift the petitioner to Shanti Avedna Sadan, a hospice care institute, which, as averred in the petition, has agreed, in principle, to admit the petitioner in the said centre. We deem it appropriate to issue directions to the respondents to provide the necessary escort and guards to ensure that the petitioner does not pose a flight risk and/or security threat. At the same time, we deem it appropriate to direct the authorities to take the petitioner for the treatment at Tata Memorial Hospital from Shanti Avedna Sadan as and when advised by the treating doctors at Tata Memorial Hospital. We propose to direct the authorities to keep the petitioner in Shanti Avedna Sadan for a period of 12 weeks, for which the medical team has planned the treatment.

15. At this juncture, we do not deem it expedient to delve into the rest of the prayers in the petition like facilities for communication and personal meetings with the petitioner's husband and lawyers as the primary and pressing concern is the palliative care of the petitioner.

16. Hence, the following order :

O R D E R

(a) The Superintendent, Byculla Women Prison, respondent No.1 is directed to shift the petitioner-Nirmala Kumari Uppuganti to Shanti Avedna Sadan, a hospice centre, under requisite escort and appropriate security.

(b) The petitioner be admitted in Shanti Avedna Sadan for a period of 12 weeks, for which the treatment is planned, from the date of her admission, under appropriate security.

(c) The Superintendent, Byculla Women Prison shall co-ordinate with the Administrator of Shanti Aveda Sadan so as to make proper arrangements for the admission and stay of the petitioner at the said Centre from the point of security as well as avoiding any inconvenience and discomfort to other patients in the said centre.

(d) The Senior P.I., Bandra (West) Police Station within the

local limits of which Shanti Avedna Sadan is situated, shall provide necessary security personnel at Shanti Avedna Sadan for the period the petitioner is admitted therein.

(e) The Superintendent, Byculla Women Prison, respondent No.1 and the Senior P.I., Bandra (West) Police Station shall ensure that the petitioner is taken to Tata Memorial Hospital for treatment as and when advised by the treating doctors at Tata Memorial Hospital.

(f) The authorities shall allow the petitioner to have the telephonic conversation with her husband-Satyanarayan Rani, who is lodged in Arthur Road Central Prison, as per extant arrangement.

(g) To facilitate the authorities to make the necessary arrangements, we direct that the petitioner be shifted to Shanti Avedna Sadan, latest by 15th September 2021.

Post the matter for reporting compliance on 16th September 2021.

All concerned to act on an authenticated copy of this order.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]