



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L.) NO. 12243 OF 2024

XYZ

...Petitioner

Vs.

State of Maharashtra & Ors.

...Respondents

Mr. Nigel Quraishy with Mr. Dhananjay Deshmukh for Petitioner.
Smt. P. H. Kantharia, GP with Smt. Pooja Patil, AGP for State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATE: 10 APRIL, 2024.

P.C.

1. This writ petition under Article 226 of the Constitution is filed by the petitioner to protect the legal rights and health interest of her daughter, who as on date is stated to be 17 years and 4 months old. As set out in the petition, sometime back it came to the petitioner's knowledge, that her daughter is about seven months pregnant. Her daughter has refused to disclose the details in that regard, stating that her relationship with the concerned person, who is also a minor, was consensual. The petitioner's daughter as also the petitioner do not intend to take any legal action taken against such person, with whom she was in relationship. Such averments are made in paragraph 12 of the petition.

2. The grievance of the petitioner is that in the peculiar facts and circumstances of the case, whenever the petitioner approached a clinic or a hospital for medical treatment for her daughter, she was called upon to show a police complaint made by her. It is the petitioner's case that as the petitioner's daughter never intended to register any police complaint and for want of which she is being deprived of medical treatment. In these circumstances, the petitioner contends that Article 21 of the Constitution guarantees a fundamental right to the petitioner's daughter, to be provided medical treatment, which in no case can be denied to her. In these circumstances, the petitioner has prayed for the following substantive reliefs:-

b. This Hon'ble Court, by a writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order and/or direction, be pleased to direct the Respondents either to provide medical treatment to the Petitioners daughter, in any nearest government hospital or direct the Respondents to issue necessary instructions to any private hospital or nursing home of her choice to provide the necessary medical treatment without insisting for police complaint.

c. This Hon'ble Court, by a writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order and/or direction, be pleased to direct the Respondents to provide assistance of shelter home service, to the Petitioners daughter or direct the Respondents to issue necessary instructions to shelter home, which is available in the vicinity of her choice without insisting for Police Complaint.

d. This Hon'ble Court, by a writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order and/or direction, be pleased to direct the Respondents to submit the report of compliance of providing medical treatment to this Hon'ble Court."

3. We have heard Mr. Quraishy, learned counsel for the petitioner and Ms. Kantharia, learned GP for the State.

4. In the context of the prayers as made in the petition, Mr. Quraishy, learned counsel for the petitioner has drawn our attention to the averments as made in the petition. He submits that in the facts of the case, the petitioner would be agreeable for treatment to be provided to her daughter at the Sir J.J. Group of Hospitals. He has submitted that in so far as the shelter home is concerned, the petitioner with an assistance of an NGO, has identified a shelter home namely “St. Catherine’s Home, Veera Desai Road, Andheri, Mumbai”, which is ready to accommodate the petitioner’s daughter. Although the said shelter home is not represented before us, we accept the statement as made on behalf of the petitioner for the petitioner’s daughter to be admitted at the said shelter home. It would also be appropriate that the concerned officials of the State Government would render all cooperation and assistance to the petitioner for admission of her daughter to the shelter home, if the need so arises. It is also the contention of the petitioner that the child which would be born is intended to be given in adoption.

5. In so far as the medical treatment to be received by the petitioner’s daughter is concerned, Ms. Kantharia has fairly stated that the petitioner can receive treatment for her daughter at the Sir J.J. Group of Hospitals which will provide all medical treatment to her daughter without her identity being disclosed. She has however submitted that a formal statement of the petitioner in regard to her case, that her daughter does not want to file a police complaint

which needs to be made in the form of an 'Emergency Police Report' (EPR), needs to be given by her.

6. We are of the opinion that there is no harm in the petitioner presenting an EPR and in the facts of the case, such EPR can be handed over by the learned advocate for the petitioner to the learned Government Pleader who can keep the same in a sealed cover and as and when need so arises, it can be utilized for the appropriate purpose with the prior permission of the Court.

7. In regard to the petitioner's contentions on her entitlement to medical treatment is concerned, we find ourselves in agreement with the learned counsel for the petitioner that in the peculiar facts and circumstances of the case, it can never be that the petitioner's daughter is deprived of any medical treatment from any hospital or medical centers and more particularly considering the age of the petitioner's daughter, who in some months would be an adult of 18 years of age. The fact situation is clear that relations of the petitioner's daughter with the boy who is also a minor, were consensual. Neither the petitioner in the capacity of a parent nor the petitioner's daughter say's that she is a victim, and in fact she was conscious and aware of her actions, hence they are not desirous of registering any police complaint under the provisions of the Protection of Children from Sexual Offences Act, 2012. In these circumstances, in our opinion, there cannot be an insistence from any medical centres or hospitals, that nonetheless, the petitioner should register a

police complaint as a condition to receive medical treatment. Merely for the reason that there is no police complaint, the petitioner's daughter cannot be denied medical aid.

8. In our opinion, grant of medical aid to any person is a direct concomitant of Article 21 of the Constitution, which guarantees right to life and livelihood which includes the protection of one's health by making available appropriate medical aid. In a civilized society no person can be deprived of medical aid/treatment, much less in the present circumstances.

9. In this view of the matter, we find it appropriate to dispose of this petition by the following order:-

ORDER

i. The petitioner shall provide an EPR on the case of the petitioner's daughter to be submitted through her Advocate to the learned Government Pleader by tomorrow i.e. 11 April, 2024. The learned Government Pleader, after verification of the EPR, shall keep the same in a sealed cover to be used only if necessary after obtaining permission from this Court.

ii. The Dean of Sir J.J. Group of Hospitals shall take all the precaution and care to maintain confidentiality of the case and to provide medical treatment to the petitioner's daughter under the identification 'ABC', without insistence of any police complaint.

- iii. The petitioner shall be entitled to seek medical treatment for her daughter at Sir J.J. Group of Hospitals during her pregnancy and provide all pre-maternity medical aid and admission at the hospital for the delivery of the child and post maternity care.
- iv. An endeavour be made to provide medical treatment to the petitioner's daughter independently or by a special method.
- v. St. Catherine's Home situated at Veera Desai Road, Andheri, Mumbai, shall admit the petitioner's daughter by maintaining confidentiality including the name of the petitioner's daughter and shall render all care and cooperation to her in regard to her medical condition till the child is born.
- vi. All contentions of the petitioner in regard to the issues of adoption of the child are expressly kept open.
- vii. The petition stands disposed of in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)