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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 31.12.2025+ W.P.(C) 16793/2025

PROFESSOR ALKA ACHARYAPetitioner
Through: Mr. Lzabeer Ahmad and
Mr. Kartikeya Sharma, Advocates.
versus

GOVT. OF NCT OF DELHI AND ORS. & ORS.Respondents
Through: Ms. Nitika Bhutani, Advocate for
GNCTD.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The petitioner in the present petition by invoking the *parens patriae* jurisdiction of this Court seeks to be appointed as the legal guardian of her husband Mr. Salam Khan, who is stated to be in a vegetative/comatose state after suffering from an “Intracranial Haemorrhage” in February 2025.
2. It is stated that the petitioner married Mr. Salam Khan on 28.06.1989. Respondent no.2 (Ms. Tara Isha) and respondent no.3 (Mr. Aryaan Ishan) are the children born out of their wedlock.
3. Learned counsel on behalf of the petitioner submits that on 09.02.2025, Mr. Salam Khan was diagnosed with a severe brain haemorrhage and underwent an emergency lifesaving surgery at the Apollo Hospital, Sarita Vihar, Delhi. Subsequently, on 14.02.2025, for further treatment, Mr. Khan was shifted to Fortis Hospital, Vasant Kunj, Delhi and was discharged on 11.04.2025. Since discharge, Mr. Khan has been under



constant care and supervision of his family at his residence. However, his medical condition has not improved and he continues to remain in an unconscious and vegetative state, requiring a tracheostomy tube for breathing and Ryle tube for feeding.

4. It is also pointed out that a certificate dated 11.04.2025 issued by the Senior Consultant MD(Med.), DM (Neurology), Department of Neurology, Fortis Flt. Lt. Rajan Dhall Hospital, Vasant Kunj, Delhi, expressly certifies that Mr. Salam Khan is suffering from “Intracranial Haemorrhage” and is “bed bound” and in “unconscious state”.

5. Further, by placing reliance on judgment rendered by a coordinate Bench of this Court in *N.A. and Ors. vs Govt. of NCT of Delhi and Ors.*, 2023 SCC OnLine Del 41 learned counsel of the petitioner submits that the petitioner has invoked *parens patriae* jurisdiction of this Court for being appointed as the legal guardian of Mr. Salam Khan since presently there exist no remedy under the law and/or any Statute that stipulates/lays down a procedure for spouse/legal heir to secure guardianship of an individual who is in a comatose/vegetative state.

6. In the circumstances, the petitioner has filed the present petition seeking guardianship of Mr. Salam Khan with regards to all matters relating to his estate including (but not limited to) immovable and movable properties, financial affairs, social security funds etc., in order to enable her to arrange the affairs and assets of Mr. Salam Khan for managing his medical requirements and expenses. The various movable and immovable assets owned by Mr. Salam Khan individually as well as jointly with the petitioner have been disclosed in the present petition as under:-



“a. Assets solely held by Shri Salam Khan-

- i. HDFC Bank Account bearing 50300680664191
- ii. HDFC Bank Account bearing 50300322183565
- iii. HDFC Fixed Deposit bearing No. 50300607228147
- iv. Kotak Bank Mutual Fund (Folio No. 10028246/06)
- v. Axis Bank Mutual Fund (Folio No. 910143140481)
- vi. TATA AIA U193211243
- vii. Vehicle Renault Triber bearing Registration No.: DL8CAZ2252

b. Assets jointly held by Shri Salam Khan with the Petitioner.

- i. Immovable Property being C-004 Nava Kairali GHS, Dwarka Sector 3, Plot number 10, New Delhi 110078
- ii. Immovable Property being Flat 1504, Tower A, Sanskriti Vihar, 10th Avenue, Gaur City II, Greater Noida, Ghaziabad, Uttar Pradesh 201009
- iii. SBI Bank Account bearing No. 10596551498
- iv. SBI Senior Citizen Savings Account no. 00000038396001987”

7. Vide an order dated 07.11.2025, passed in the present proceedings, it was *inter-alia* directed as under: -

“7. Considering the aforesaid judgment dated 07.01.2020, the following directions are issued:

- (i) Mr. Salam Khan will be examined by a duly constituted Medical Board in Indira Gandhi Hospital Sector-9, Dwarka. The Medical Board would include, inter-alia a neurologist and such other doctors, as may be deemed appropriate by the hospital authorities. For the aforesaid, purpose, the petitioner shall make arrangements to take Mr. Salam Khan to the said hospital for necessary examination.*
- (ii) Learned counsel for GNCTD is requested to liase with the hospital authorities and the petitioner, to ensure that the examination takes place in a smooth manner. Let the report of the Medical Board be placed on record before the next date of hearing.*
- (iii) The concerned SDM (South-West), in whose jurisdiction, Mr. Salam Khan is lying in comatose condition, is directed to carry out an inquiry in terms of paragraph no. 36 (iii) of the aforesaid judgment dated 07.01.2020. Let the inquiry be concluded as expeditiously as possible and preferably before the next date of hearing.”*

8. Subsequently, vide an order dated 13.11.2025, the aforesaid order



dated 07.11.2025 was modified to the extent that the medical board which was initially directed to be constituted at Indira Gandhi Hospital Sector-9, Dwarka for examination of Mr. Salam Khan (in terms of paragraph 7(i) in the said order dated 07.11.2025) was directed to be instead constituted at Govind Ballabh Pant Institute of Post Graduate Medical Education and Research, Delhi (GIPMER) or any other suitable government hospital. The relevant portion of the said order reads as under:-

“2. The present application avers that after the aforesaid order was passed, it transpired that Indira Gandhi Hospital Sector-9, Dwarka does not have a neurology department. As such, the application seeks that the name of the hospital referred to in paragraph no.7 of the order dated 07.11.2025 viz. Indira Gandhi Hospital Sector-9, Dwarka be replaced with Govind Ballabh Pant Institute of Post Graduate Medical Education and Research, Delhi (GIPMER).

3. Further, the application seeks that in view of the dire medical condition of the petitioner’s husband, in the first instance, the petitioner’s husband be examined by the concerned Medical Board at his residence in Dwarka.

4. It is submitted that the applicant/petitioner shall coordinate (with the assistance of learned counsel for GNCTD) with the hospital and make all necessary arrangements for such examination by a duly constituted Medical Board of Govind Ballabh Pant Institute of Post Graduate Medical Education and Research, Delhi (GIPMER). It is further submitted that all the cost thereof be borne by the petitioner.

5. Considering the averments made in the application, the same is allowed. Paragraph no. 7(i) of the order dated 07.11.2025 stands modified. The same shall now be read as under:

“.....i) Mr. Salam Khan will be examined by a duly constituted Medical Board from Govind Ballabh Pant Institute of Post Graduate Medical Education and Research, Delhi (GIPMER) or any other suitable government hospital. The Medical Board would include, inter-alia a neurologist and such other doctors, as may be deemed appropriate by the hospital authorities. For the aforesaid purpose, the Medical Board so constituted shall, at the first instance, visit the residence of the Petitioner for necessary examination.”

6. Application stands disposed of in the above terms.”



9. In compliance with the directions contained in the aforementioned orders, a report of the SDM (South-West) dated 08.12.2025 and Opinion of Medical Examination dated 13.12.2025 conducted by the Medical Board of Govind Ballabh Pant Institute of Post Graduate Medical Education and Research, Delhi (GIPMER) has been placed on record for the perusal of this Court by the learned counsel of respondent nos.1 and 4.

10. The Opinion of the Medical Examination dated 13.12.2025 conducted by the concerned medical board reads as under:-

“OPINION OF MEDICAL EXAMINATION

With reference to a direction, received from Delhi High Court, regarding the medical examination of Patient Salam Khan in the case of Professor Alka Acharya Vs Govt of NCT of delhi.

The patient and medical records have been evaluated in detail during the home visit at 3102 Block-3 Jawahar Apartments, Plot No-9 Sec-5 Dwarka. At present:

Patient is a post-operative case of right ganglion-thalamic bleed, who underwent temporal lobectomy and decompression on February 2025. Post-surgery, patient has had prolonged hospital stay at multiple hospitals, with stormy course, complicated by UTI meningitis and respiratory tract infections.

Currently during home visit:-

Patient is in persistent vegetative state, tracheostomized, Ryle's tube, feeding, bed bound not obeying to commands, grimaces to pain, moving all four limbs against gravity, vital stable.

Patient is not fit to undertake his daily activities and needs constant supportive care and supervision. Considering that he is in a vegetative state, he is also not fit to take any major decisions on his own. As per standard criteria, disability percentage is equal to 100% (Hundred Percent).”

11. The report filed on behalf of the SDM (South-West) dated 08.12.2025



inter-alia observes as under:-

“As directed by the Hon'ble Court to inquire in terms of guidelines mentioned under paragraph 36(iii) of judgment dated 07.01.2020

“The court will also direct the concerned SDM/Tehsildar..... to carry out an enquiry to establish the veracity of the assertion.....”

The assertions made in the writ petition and recorded in the order dated 07.11.2025 stand established. That Shri Salam Khan suffered a massive intracranial haemorrhage on 09.02.2025 and continues to remain in a persistent vegetative state requiring tracheostomy and Ryle's tube. The patient was personally examined. The Statements of the two nurses and photographs are annexed here with as Annexure R-3.

“.....gather information as regards the relationship that the person(s) who wish to be appointed as guardians has/have with the person lying in comatose state.....”

*That Prof. Alka Acharya (Aadhaar xxxxxxxxxxxx) is the legally wedded wife of Shri Salam Khan (Aadhaar xxxxxxxxxxxx) since 28.06.1989. Out of their wedlock they have two children Ms. Tara Isha (Respondent no. 2) and Mr. Aryan Ishan (Respondent no. 3). It has been Verified through their Aadhaar cards, Passport, CGHS ID card and Pension documents shown and provided on 24.11.2025. **That no other Class-I legal heir exists.***

"Information with regard to the financial condition of persons wanting to be appointed as guardians shall also be collected..."

That the Financial condition is stable. The Monthly income approximately ₹1,00,000+ royalty. Immovable properties verified:

- *Flat C-004, Ground Floor, Block-C. Kairali CGHS Ltd., Plot No.10, Sector-3, Dwarka Phase-I, New Delhi-110078*
- *Flat No. 1504, 14th Floor, A-Block, Sanskriti Vihar, Gaur City-II, Plot No. GH-03 Sector-16C, Greater Noida West, Uttar Pradesh-201009 Movable properties verified:*
- *Maruti Suzuki Swift Dzire VXi - Registration No. DL12CQ8980*
- *Renault Triber RXL - Registration No. DL8CAZ2252 Present residence rented @ ₹42,000 per month. All 18 documents submitted on 24.11.2025 physically verified.*



Apart from other aspects which may have a material bearing in their discharging the duties of a guardian...” “Any conflict of interest concerning the affairs of the person lying in comatose state will be brought to fore.

*The Monthly medical expenditure approximately ₹1,20,000 is being comfortably met. The Two independent neighbours of long acquaintance have confirmed devoted care and complete absence of any dispute. **No conflict of interest or litigation noticed.** The Statement of the neighbours alongwith their identity proof ie. Adhar Card is annexed herewith as Annexure R-4.*

*It is humbly submitted that in my opinion **nothing adverse or contrary to records has been found.** The Petitioner i.e. Prof. Alka Acharya fully satisfies all guidelines contained in paragraph 36 of the judgment dated 07.01.2020. Therefore, She is a suitable person to be appointed guardian of her husband Shri Salam Khan.”*

12. A perusal of the Opinion of Medical Examination submitted by the concerned medical board reveals that Mr. Salam Khan is a “post-operative case of right ganglion-thalamic-bleed” and “his disability percentage is equal to 100%.” The Medical Board opines that presently Mr. Khan is in a vegetative state, unfit to undertake any major decisions and requires constant support as well as supervision for his daily activities.

13. Further, the report submitted by the SDM (South-West) clearly establishes the veracity of assertions made by the petitioner in the present petition and opines that “nothing adverse or contrary to the record has been found”. The report categorically states that Mr. Salam Khan pursuant to suffering a “massive intracranial haemorrhage” on 09.02.2025 “continues to remain in persistent vegetative state requiring tracheostomy and Ryle Tube”. Further, the report of SDM verifies the immovable properties disclosed in the present petition (owned by Mr. Salam Khan) and also substantiates that



the petitioner and respondent nos.2 and 3 are the only surviving class-I legal heirs of the Mr. Salam Khan.

14. Notably, the respondent nos.2 and 3 (i.e., children of the petitioner and Mr. Salam Khan) have also placed on record affidavits stating that they have no objection to the petitioner being appointed as a guardian of Mr. Salam Khan. The affidavit of no-objection dated 29.10.2025 furnished by respondent no.2 reads as under:-

**AFFIDAVIT**

I, Tara Isha, daughter of Shri Salam Khan, resident of C-004, Kairali Apartments, Sector 3, Dwarka, New Delhi- 110078, aged about 33 years, hereby solemnly affirm and state as under:

1. The captioned writ petition is being filed by the Petitioner- Prof. Alka Acharya, who is my mother seeking guardianship of my father- Shri Salam Khan on account of deteriorating health conditions.
2. I have no objection to the Petitioner being granted the aforesaid guardianship as prayed for in the petition or any other relief/directions in favour of the Petitioner.

Kartikaya
I identified the deponent who
has signed in my presence.

Tara Isha

DEPONENT

Verification

Verified at New Delhi on this ____ day of October, 2025 that the contents of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed therefrom.



ATTESTED

NOTARY PUBLIC
NEW DELHI, (INDIA)

12 19 OCT 2025

Tara Isha

DEPONENT

NOTARY REGISTER

Entry No. 5002/A

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The affidavit of No-Objection dated 30.10.2025 furnished by the respondent no.3 reads as under:-

**AFFIDAVIT**

I, Aryaan Ishan, son of Shri Salam Khan, resident of 11/52-54
Greeves Street, St Kilda, Victoria – 3182, aged about 27 years,
hereby solemnly affirm and state as under:

1. The captioned writ petition is being filed by the Petitioner-
Prof. Alka Acharya, who is my mother seeking
guardianship of my father- Shri Salam Khan on account of
deteriorating health conditions.
2. I have no objection to the Petitioner being granted the
aforesaid guardianship as prayed for in the petition or any
other relief/directions in favour of the Petitioner.

Before me
[Signature] HUGH JOHN PEARCE
SOLICITOR & NOTARY PUBLIC
Level 13, 200 Queen Street
Melbourne, Victoria 3000, Australia

[Signature]
DEPONENT

Verification

Verified at Melbourne, Australia on this 30TH day of
October, 2025 that the contents of the above affidavit are
true and correct to my knowledge. No part of it is false and
nothing material has been concealed therefrom.

[Signature]
TRUE COPY

I, HUGH JOHN PEARCE
Notary Public
of Level 13, 200 Queen Street
in the City of MELBOURNE
in the State of VICTORIA
in the Commonwealth of AUSTRALIA
CERTIFY
that I was present in Melbourne
on this day and saw the signatory
who provided satisfactory identification
execute this document.
In witness of which I have subscribed
my name and affixed my seal of office.
My appointment is not limited by time.

[Signature]

[Signature]
DEPONENT

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15. Further, in compliance with order dated 15.12.2025 passed in the present proceedings, respondent nos.2 and 3 appeared virtually before this Court on 18.12.2025 and consented to the petitioner being appointed as the legal guardian of Mr. Salam Khan.

16. In the aforesaid conspectus, it is unequivocally established that Mr. Salam Khan pursuant to suffering “right ganglion-thalamic-bleed” in February, 2025, has been in a vegetative and comatose state, incapable of undertaking any independent decision/s and/or activities. Therefore, for welfare of Mr. Salam Khan appointment of a legal guardian is warranted.



17. Further, it is also an admitted position that Mr. Salam Khan is survived by the petitioner (his wife) and respondent nos.2 and 3 (his children); and there are no class-I legal heirs of Mr. Khan besides the aforementioned. Further, respondent nos. 2 and 3 have no objection in appointment of the petitioner as the legal guardian of Mr. Salam Khan.

18. In a catena of judgments, this Court has invoked its *parens patriae* jurisdiction for appointing legal heir/spouse as the legal guardian thereof.

19. In *N.A and Ors. vs Govt. of NCT of Delhi and Ors.* (supra), a coordinate Bench of this Court took note of the legal vacuum in the extant legal regime viz. appointment of legal guardian for an individual in vegetative/comatose and held as under: -

“13. This Court notices that such persons who are in a vegetative state are unable to take decisions for themselves, however, there is no mechanism provided in law under the RPWD Act, 2016 or the Mental Healthcare Act, 2017 for appointment of guardians to take care of such persons and their assets. This legal vacuum was considered in detail by this Court in the judgment dated 29th October, 2021 passed in W.P. (C) 1271/2020 titled S.D. v. GNCTD where this Court had exercised parens patriae jurisdiction while constituting a guardianship committee. The relevant part of the said judgment is as under:

“215. In any event, since the power under Section 14 of RPWD-2016 can be exercised by a Designated Authority, such a Designated Authority would fall within the overall superintendence of this Court exercising writ jurisdiction. In the absence of a Designated Authority having been notified under Section 14, this Court is also vested with the power to exercise jurisdiction under the proviso to Section 14(1), as there is a clear legal vacuum that has been created.

216. While exercising parens patriae jurisdiction, Courts used to apply the principle of “best interest of the individual”. However, with the introduction of the UNCRPD, “best interest” of the individual has to be in the light of the “wills and preferences” of the individual. The same could be determined by means of advance directives and in the absence of advance directives, facts and circumstances which point towards the wishes/intent of the



concerned person. Thus, the “wills and preferences” of the mentally ill person have to be considered by the Court in deciding the manner in which care is to be given.

217. As noted in the concerns raised during the Parliamentary debates concerning the MHA-2017 and also from the lack of designated authorities explained above, there are gaps unaddressed by the legislations. The social fabric of family structures in India ought to be considered. In the same vein, the Court notes that the MHA-1987 had laid down certain standards and factors to be considered while determining the “best interest” of the mentally ill person. However, under RPWD-2016 and the MHA-2017, no guidance exists as to what would constitute the “wills and preferences” of the person. Under Section 14 of RPWD-2016, limited guardianship is for a specific period, a specific decision and a specific situation, in accordance with the will of the PwD. Even in the proviso to Section 14(1), the factors to be considered for providing total support are conspicuously absent. The MHA-2017 has no provision in respect of management of financial affairs, appointment of guardians or the manner in which the moveable/immovable property of the mentally ill person is to be taken care of. Thus there is a clear statutory vacuum.

218. On the issue of Maintainability therefore the following factors are noted:

- (i) The RPWD-2016, the MHA-2017 or the RPWD (Delhi) Rules-2018 do not create any embargo on the exercise of parens patriae jurisdiction.
- (ii) Providing ‘total support’ is contemplated under Section 14 of the RPWD-2016.
- (iii) However, the power under Section 14 of RPWD-2016 is to be exercised by the District Court or the Designated Authority. Currently, under the RPWD (Delhi) Rules-2018, no Designated Authority has been appointed under Section 14.
- (iv) Under the proviso to Section 14(1) of RPWD, 2016, there is no guidance as to the factors to be considered for providing total support.
- (v) The various institutions and establishments contemplated under RPWD-2016 do not appear to be fully operational.
- (vi) There is a clear legal vacuum in respect of providing total support to a person with disability who requires such support. No precedent has been cited either under the RPWD-2016 or MHA-2017 in this regard.



(vii) *There are several gaps and concerns in the two legislations, i.e., RPWD-2016 and MHA-2017. All the required institutions under these statutes are not fully set up and functional.*

(viii) *In the present case, the condition of Mr. DMP is such that the Court has to take a comprehensive view under both legislations on two aspects:*

(a) *In respect of his medical care and treatment; and*

(b) *For management of his financial affairs, both movable and immovable assets which are valued at more than Rs. 3000 crores.*

(ix) *Above all, this Court is exercising jurisdiction under Article 226/227 of the Constitution of India, which is a jurisdiction conferred by the Constitution of India and in various judgments of the Id. Supreme Court, the parents patriae jurisdiction is clearly vested in Constitutional Courts. The present case falls in the category of exceptional circumstances, as held in Shafin Jahan (supra).*

219. In any event, this Court is of the opinion that the solemn nature of the said jurisdiction having been repeatedly recognised by the Supreme Court, the question as to which Court has to exercise it and in what manner is one of mere procedure. So long as the “wills and preferences” of the mentally ill person and the other factors set out in the rules are borne in mind by the Court exercising parens patriae jurisdiction, it cannot be held that the High Court exercising power under Article 226 is denuded of power in view of the provisions of the RPWD-2016 Act or the Rules thereunder.

220. Thus, both, while exercising jurisdiction under Article 226 and even in terms of the proviso to Section 14(1) of the RPWD-2016 and under the MHA-2017, this Court has the power to entertain the present petition seeking appointment of a guardian. (ii) Who can be the guardian/nominated representative? (Legal Position)

221. As discussed earlier, under Section 14(4) of the MHA-2017, the nominated representative can be any person who may have been chosen by an advance directive. In the absence of an advance directive, the nominated representative can be a relative. It is only if a relative is not available or is not willing to be the nominated representative, that in the order of preference, a care-giver or thereafter a suitable person can be appointed. A relative as defined under the MHA-2017, as extracted above, as a person related to the person with mental illness by blood, marriage or adoption. On the other hand, the RPWD-2016 does not define who can be a guardian. While some institutional mechanisms are contemplated under the RPWD-2016, the existence and the viability of such



institutions has not been addressed before this Court during the course of submissions by either party. Under the RPWD (Delhi) Rules-2018, the preference of merit for appointment as a limited guardian is contained in Rule 7(6). The preference therein is to blood relatives, adult children, siblings, spouse, and it is only thereafter that care givers or other personalities can be considered. There, the common principle seems to be preference to relatives over caregivers or other unrelated people.

222. In the opinion of this Court, the nominated representative or total support arrangement or guardian need not always be an individual. Guardianship could be exercised by even a guardianship committee, depending upon the facts, as long as such a committee would be an appropriate measure for enabling the person to exercise his legal capacity, as per his will and preferences. If the mentally ill person requires complex medical decisions to be taken, has an expanse of moveable/immovable assets, and requires management of complex financial affairs, and the Court is of the opinion that this entire function cannot be performed by one individual, a committee can be appointed.”

14. Subsequent to the decision in S.D. v. GNCTD (Supra) the Bombay High Court in W.P. (C) 1266/2021 titled Lubina Mohamed Agarwal v. Union of India decided on 13th December, 2021 has also considered the same issue and has observed as under:

“12. Mr. Khambata, learned Senior Counsel for the Petitioners, has placed before us a note on the various statutes in question including the Mental Healthcare Act, 2017, The Rights of Persons with Disabilities Act, 2016 and what we will refer to as the National Welfare Trust Act of 1999.

13. Overriding all these is the doctrine of parens patriae, one that was discussed by the Supreme Court in Aruna Ramchandra Shanbaug v. Union of India, and more recently in Shafin Jahan v. Asokan K.M. The Supreme Court has said that the parens patriae doctrine may be invoked in a Constitutional Court in exercise of its jurisdiction wherever the welfare of the person, be it a child or a person who is mentally ill, needs protection. The doctrine is invoked to meet the ends of justice. It is not to be applied blindly in every case, but in exceptional cases where the subject of the petition is not mentally or physically capable (or is of a very young age) and where there is no other parent or legal guardian. This is perhaps a reversal of the usual guardian-and-ward doctrine. There, a birth parent is the natural guardian of the person and property of the minor child. But reverse situations



have often come to court, where it is the parent who needs care from the child. The law does not explicitly or automatically recognise the child as the legal guardian of the parent, and it is for this purpose that the parents *parens patriae* principle is invoked to provide precisely such relief. In *Rajni Hariom Sharma v. Union of India*, a Division Bench of this Court had before it the claim of a wife to be appointed the guardian of her husband, said to be in a vegetative state. In paragraph 17, the Division Bench said:

“17. Learned counsel for the petitioner submits that by virtue of being the wife of Mr. Hariom Sharma, petitioner is in the best position to act as his guardian considering his comatose condition and vegetative state for the last more than two years with no sign or prospect of revival. She can certainly be construed as the next friend and appointed as the guardian. On a query by the Court on what basis she was invoking writ jurisdiction of the Court, learned counsel for the petitioner submits that there is no statutory provision relating to appointment of guardian of a person who is in a state of coma or lying in a vegetative state. Therefore, a writ court exercising jurisdiction under Article 226 of the Constitution of India would be in the best position to grant relief to the petitioner....

14. This and other decisions were considered in Vijay Ramchandra Salgaonkar v. the State, a judgment of 17th July, 2021 by a Bench of which one of us (Madhav J. Jamdar J.) was a member. The Petitioner sought an order appointing himself as the guardian of his wife. She too had dementia (apart from other ailments). The Bench reviewed some of the case law on the subject and in paragraphs 15 to 16 held:

“15. Writ Petition No. 9712 of 2017 was filed before this Court by Santosh Rohidas Deshmukh seeking a direction to appoint him as a guardian of his father Rohidas Deshmukh who was not in a position physically and mentally, to take care of himself and managing his property. After referring to the decision of Madras High Court in the case of Sairabanu Mohammed Rafi v. State of Tamil Nadu, Writ Petition No. 28435 of 2016 decided on 06.01.2016, this Court appointed the petitioner as guardian of his father including for the purpose of operating bank accounts.

15.1. Likewise in Writ Petition (L) No. 28269 of 2017, Philomena Leo Lobo v. Union of India decided on 13.10.2017, a Division Bench of this Court allowed the prayer of the



petitioner Philomena Leo Lobo for declaring her as guardian of her husband Leo Lobo who was in a comatose condition.

16. In Sikha Arjit Bhattacharya v. Union of India, Writ Petition No. 11757 of 2018 decided on 27.10.2020, a Division Bench of this Court accepted the prayer of the petitioner Sikha Arjit Bhattacharya and declared her as the guardian of her husband Dr. Arjit Bhattacharya who was in a vegetative state.

16.1. Very recently, a Division Bench of this Court in Smt. Reshma Salam Kondkari v. Union of India, Writ Petition (L) No. 11394 of 2021 decided on 17.06.2021, declared the petitioner Reshma Salam Kondkari as the guardian of her husband Abdul Salam Ismail Kondkari who is in a vegetative state, for managing the bank accounts and immovable property of the husband including selling of flat.”

15. We also chose to reproduce paragraphs 17.1 to 17.3 of the decision in Salgaonkar below:

“17.1. In that case it was held that when a person is in coma or in a comatose condition or in a vegetative state, it cannot be construed that such a person is a physically challenged person or a mentally challenged person as is understood under the relevant statutes. Nor such a person can be construed to be a minor for the purpose of appointment of guardian. In the circumstances it was held that statutes like the Guardians and Wards Act, 1890, Mental Healthcare Act, 2017 etc. would not applicable to persons in a comatose condition or in a vegetative state. It was also held that there is no legislation in India relating to appointment of guardians to patients lying in comatose or vegetative state.

17.2. On the crucial issue as to relief that may be granted to the petitioner by invoking writ jurisdiction under Article 226 of the Constitution of India, it was noticed that there is no statutory provision governing the field relating to appointment of guardian of a person lying in a comatose condition or in a vegetative state. This Court referred to and deliberated upon the doctrine of parens patriae whereafter it was held that in a case like this it is the court alone as the parens patriae which must take the ultimate decision though views of the near relatives, next friend and doctors must be given due weightage. After referring to decisions of various High Courts including our High Court, this Court examined the width and plenitude of the power of the High Courts under Article 226 of the Constitution of India and also relied upon the decision of the Supreme Court in Aruna Ramchandra Shanbaug v. Union of



India, (2011) 4 SCC 454, and held that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. It was held as under:

“38. From the above, it is clearly deducible that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. To provide justice or discharge ex debitojustitiae is the raison d'etre of the courts. The Latin expression ex debito justitiae literally means a debt of justice; on account of justice; a claim the refusal of which would involve an injustice, and therefore, one which justice owes it to the claimant to recognize and allow. The doctrine of ex debitojustitiae is well established and requires no further elaboration. In addition to Article 226 of the Constitution, such power of the High Court is traceable to section 151 of the Civil Procedure Code, 1908 and section 482 of the Criminal Procedure Code, 1973.”

17.3. While acceding to the prayer of the petitioner in that case, this Court also sounded a note of caution that there should be some kind of monitoring of the functioning of the petitioner as guardian to ensure that guardianship was being used for the benefit of the person who was in a vegetative state observing that such monitoring may be carried out through the forum of Maharashtra State Legal Services Authority constituted under the Legal Services Authorities Act, 1987.”

16. Sitting singly one of us (GS Patel J) had a similar application though in a suit on the Original Side in Nitin Thakker v. State of Maharashtra. By an order dated 13th August, 2020, the Court appointed a Senior Advocate of this Court as the guardian of solicitor who had no family at all but was himself suffering from dementia. In paragraph 20, the decision said:

“20. The present case falls only partly within the provisions of Order 32-A(2)(c) [of the Civil Procedure Code, 1908]. But as this Complaint points out, the state of the law in India simply does not make any sort of provision for a situation such as the present one. Mr. Damania is neither mentally challenged, nor of unsound mind nor a minor. He has no family. He is incapacitated by an illness and the current laws of guardianship do not provide any recourse in as situation like this. This is, therefore, something of a vacuum in law. That, however, does not mean that Courts are helpless or that situations such as these should go unattended and



unaddressed. I can draw support from the provisions of Order 32-A of the CPC, Kathawalla J's previous order of 6th March, 2017 and also in a properly brought Suit make reference to the omnibus provision for doing substantial justice that we find in Section 151 of the CPC. This says that nothing in the CPC limits or otherwise affects the inherent power of the Court to make such orders as may be necessarily for the ends of justice or to prevent the abuse of the process of the Court."

17. This was also considered in *Rajni Hariom Sharma*.

18. By a previous order dated 12th August, 2021, Kamar was to be examined by specialist at the JJ Group of Hospitals. That has been done. We have the reports before us today. She was examined on 18th August, 2021. She was found to be conscious but minimally cooperative and communicative. She was bed-ridden. Her attention was minimal. She had a forward attention of span of two and a nil backward attention span. She was hard of hearing and could follow only very simple commands, not complex instructions. Her speech was incoherent and reduced in tone and output. Her concepts and judgments were impaired, as was her memory. The conclusion was that she suffers from advanced dementia, needs assistance in her day-to-day activities and will require further investigation and monitoring. The reports states that the Indian Disability Assessment Scale Score was 20, suggestive of profound disability.

19. In these circumstances, we are inclined to grant the relief Mr. Khambata seeks, but subject to certain safeguards. To begin with, we make it clear that we are not disposing of this Petition. It is also not our intention that the directions that follow are either rigid or constitute a precedent of any kind. Given the state of the law, which we have briefly set out above, each case will need to be addressed on its own merits. Indeed, we would suggest that in matters like these, no two cases will be exactly alike ever. Each case will require a differently calibrated response from the Court. We also intend to monitor Kumar's condition and will list the matter periodically for updates. The present order may then continued or modified as Required."

20. Further in *Shobha Gopalkrishnan and Ors. vs. State of Kerala and Ors.*, 2019 SCC OnLine Ker 739 a Division Bench of the Kerala High Court, after addressing the said issue at length, laid down certain procedures/guidelines for dealing with the same, till proper legislation is formulated in regards thereto. The relevant portion of the said judgment



reads as under:-

“42. Considering the role of this Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any Statute to persons like patients in ‘comatose state’. It is something like ‘parens patriae’ jurisdiction. A reference to the verdict in Nothman v. Barnet London Borough Council, [1978 (1) WLR 220] (at 228) is also relevant. In such cases, it is often said, Courts have to do what the Parliament would have done. A reference to the verdict in Surjit Singh Karla v. Union of India [1991 (2) SCC 87 explaining the principle of ‘causes omissus’ is also brought to the notice of this Court; to the effect that if it is an accidental omission, court can supply/fill up the gap. This Court however does not find it appropriate to “re-write” the provision, as it is within the exclusive domain of the Parliament. This is more so, when the relevant statutes like Mental Health Act, 1987 and PWD Act, 1995 came to be repealed, on introducing the new legislations, such as the Mental Healthcare Act 2017 and The Rights of persons with Disabilities Act, 2016 in conformity with the mandate of U.N. Convention, 2006. This Court does not say anything whether any amendment is necessary, also in respect of the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999) with reference to the U.N. Convention 2006. It is for the Government to consider and take appropriate steps in this regard, as it is never for the Court to encroach into the forbidden field. This Court would only like to make it clear that, in so far as the case of a patient lying in ‘comatose state’ is not covered by any of the statutes, (as discussed above), for appointment of a Guardian, the petitioners are justified in approaching this court seeking to invoke the power under Article 226 of the Constitution of India. It is declared accordingly.

43. Coming to the incidental aspects; since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in ‘comatose state’, it is necessary to stipulate some ‘Guidelines’, based on the inputs gathered by this Court from different corners, as suggested by the learned counsel for the petitioners, the learned Government Pleader and also by the learned Amicus Curiae, till the field is taken over by proper legislation in this regard. This Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

i) petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both



movable and immovable, owned and possessed by the patient lying in comatose state.

ii) The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted Medical Board, of whom one shall definitely be a qualified Neurologist.

iii) A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

iv) The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.

v) The person applying for appointment as Guardian shall be one who is legally competent to be appointed as a Guardian vi) The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed shall act always in the best interest of the person lying in 'comatose state'.

vii) The person appointed as Guardian shall file periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides showing the utilization of the funds received and spent by him/her.

viii) The Registrar General shall cause to maintain a separate Register with regard to appointment of Guardian to persons lying in 'comatose state' and adequate provision to keep the Reports filed by the Guardian appointed by this Court.

ix) It is open for this Court to appoint a person as Guardian to the person lying in comatose state, either temporarily or for a specified period or permanently, as found to be appropriate.

x) If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action



against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

xi) It shall be for the Guardian appointed by the Court to meet the obligations/duties similar to those as described under Section 15 of the National Trust Act and to maintain and submit the accounts similar to those contained in Section 16.

xii) The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in 'comatose state' at random and to submit a report, if so necessitated, calling for further action/interference of this Court.

xiii) The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise.

21. The aforesaid view has also been reiterated by (i) this Court in ***Vandana Tyagi vs Govt. of NCT of Delhi***, 2020:DHC:44 and ***Satula Devi vs. Govt. of NCT of Delhi.***, 2021 SCC OnLine Del 4856 (ii) the Bombay High Court in ***Vijay Ramchandra Salgaonkar vs. State of Maharashtra***, 2021 SCC OnLine Bom 14114 and ***Philomena Leo Lobo vs. Union of India***, 2017 SCC Bom 8836; and (iii) the Allahabad High Court in ***Uma Mittal vs. Union of India.***, 2020 SCC OnLine All 777.

22. In the circumstances, considering the aforesaid judicial precedents and taking into account the Opinion of the Medical Examination dated 13.12.2025 and report of the SDM (South-West) dated 08.12.2025, the



following directions are issued:-

- i. Prof. Alka Acharya (wife of Mr. Salam Khan) is appointed as the legal guardian of Mr. Salam Khan;
- ii. Prof. Alka Acharya shall have the right to take decisions in regard to, but not limited to, the medical treatment, caretaking, daily expenditures, finances, management / dealing with assets of Mr. Salam Khan; and
- iii. Prof. Alka Acharya shall be at a liberty to deal with any moveable and immovable assets of Mr. Salam Khan towards his medical and daily expenditures. Specifically, Prof. Alka Acharya is permitted to handle the affairs as regards the following assets:-

A. Assets solely held by Mr. Salam Khan-

- a) HDFC Bank Account bearing no.50300680664191;
- b) HDFC Bank Account bearing no.50300322183565;
- c) HDFC Fixed Deposit bearing no. 50300607228147;
- d) Kotak Bank Mutual Fund (Folio No. 10028246/06);
- e) Axis Bank Mutual Fund (Folio No. 910143140481);
- f) TATA AIA U193211243;
- g) Vehicle Renault Triber bearing Registration No.:
DL8CAZ2252.

B. Assets jointly held by Mr. Salam Khan with the petitioner-

- a) Flat C-004, Ground Floor, Block-C, Kairali CGHS Ltd.,
Plot no. 10, Sector 3, Dwarka Phase-I, New Delhi
110078;



- b) Flat 1504, 14th floor, A-block, Sanskriti Vihar, Gaur City II, Plot no. GH-03, Sector 16 C, Greater Noida West, Ghaziabad, Uttar Pradesh 201009;
- c) SBI Bank Account bearing No. 10596551498;
- d) SBI Senior Citizen Savings Account no. 00000038396001987.

23. The present petition is disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 31, 2025/sl