

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1983 OF 2021

Jenny Roweena (Wife of Hany Babu Tharayil) Petitioner

Versus

The State of Maharashtra & Anr. ... Respondents

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Dr. Yug Mohit Chaudhary for the Petitioner.

Mr. Jayesh P. Yagnik, PP for the Respondent-State.

Dr. B.G. Chikkhalkar, Doctor of G.T. Hospital present.

Mr. Sandesh Patil for UOI.

Mr. Anil Singh, ASG for UOI.

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CORAM : S.J. KATHAWALLA ANDs
SURENDRA P. TAVADE, JJ.

DATE : 19TH MAY, 2021.
(VACATION COURT
THROUGH VIDEO
CONFERENCING)

P.C. :-

1. The Petitioner's husband Dr. Hany Babu Tharayil is arrested in the Bhima Koregaon case and is in prison since last more than one year. He has now tested COVID positive. He is suffering from an undiagnosed acute eye infection. The infection led to inflammation of the eye muscles, blood clotting in the superior ophthalmic vein as well as the creation of an abnormality in the carotid artery which significantly endangers the brain.

2. Dr. Hany Babu Tharayil being COVID positive was earlier in J.J. Hospital. Since he was required to be treated for his ophthalmic problem, he was advised to be transferred to the Gokuldas Tejpal (G.T.) Hospital. The diagnosis, discharge medication, advice on transfer, recommended by J.J. Hospital is reproduced hereunder :-

“Diagnosis

PATIENT HAD C/O REDNESS, SWELLING, DIPLOPIA IN LIE SINCE 9 DAYS CT BRAIN+ORBIT (12/5/21) - S/O LEFT EYE PROPTOSIS

BULKY LEFT SUPERIOR RECTUS AND SUPERIOR OBLIQUE MUSCLE ENTIRE EXTENT UPTO MYOTENDENIOUS JUNCTION WITH RELATIVE HYPER EXHANCMENT AND ADJACENT FAT STRANDING IN THE INTRACONAL AND EXTRAONAL COMPARTMENT OVER SUPERIOR ASPECT FINDING S/O ORBITAL CELLULITIS INDIRECT CAROTICO CAVERNOUS FISTULA IS A REMOTE POSSIBILITY. DSA IS ADVISED IF THERE IS HIG CLINICAL SUSPENSION

DIFFERNCIAL DIAGNOSIS

1. MYOSITIS
2. ORBITAL CELLUTITIS
3. ORBITAL CELLULITIS
3. SUPERIOR OPHTHALMIC VEIN THROMBOSIS
4. INDIRECT CCF

Discharge Medication

INJ. AUGMENTIN 1.2 MILIGRAM IV BD FOR 5 DAYS

INJ. METRO 100 CC IV BD FOR 3 DAYS

INJ GENTS 60 MILIGRAM BD FOR 3 DAYS

LOCALLY RE

ADROPS PD 6 TIMES FOR 1 ST WEEK F/B

ADROPS PD 4 TIMES FOR 2 ND WEEK

ADROPS PD 3 TIMES FOR 3 RD WEEK

ADROPS PD 2 TIMES FOR 4 TH WEEK

Advise On Transfer

CT/SO ORBITAL CELLULITIS

D/D INDIRECT CCF AND MYOSTTIS.

WILL NEED MRI ANGIO.

AT PRESENT PATIENT TO BE STARTED ON IV ANTIBIOTICS

AFTER 48 HOURS OF ANTIBIOTICS, CAN BE STARTED ON MINIMAL DOSE OF STERIODS TO SUPPRESS INFLAMMATION

MRI ANGIO AND FURTHER EVALUATION OF THE PATIENT WILL BE DONE ONCE PATIENT IS COVID NEGATIVE

PATIENT IS BEEN TRANSFERRED TO WARD 5 IN GT AS PER VACANCY CONFIRMED WITH DR SANJAY SASANE (EMR GT HOSPITAL)”

3. The Doctors of G.T. Hospital are treating the eye problem of Dr. Hany Babu Tharayil to the best of their ability and infact when we had a talk with Dr. Hany Babu Tharayil through video conferencing he informed us that he is now feeling better. However, the Doctors from the G.T. Hospital have expressed their helplessness to follow the diagnosis suggested by the J.J.Hospital. They have informed the Court that as per the recommendation of the J.J. Hospital, they are required to examine the ophthalmic artery of Dr. Hany Babu Tharayil by carrying out MRI Angio which the hospital is not equipped to do and the same can be carried out only at J.J. Hospital. The Doctors from the G.T. Hospital have informed this Court that only after the patient is tested negative, he can be taken to the J.J. Hospital.

4. In view of the above, we cannot expect a patient who is tested positive to be transferred from one hospital to another for carrying out different tests, or to wait

without his test being carried out until he is tested negative. We have therefore enquired from the Advocate of Dr. Hany Babu Tharayil whether his family is desirous of shifting him to a private hospital and whether they are willing to bear the expenses of the hospital. The Advocate for Dr. Hany Babu Tharayil has taken instructions in the matter, and has informed us that the family of Dr. Hany Babu Tharayil wants him to be treated at the Breach Candy Hospital. He has also informed us that his family is ready to bear the entire expense of his treatment at the Breach Candy Hospital. In view thereof, we pass the following ad-interim/interim order:

ORDER

1. Dr. Hany Babu Tharayil shall be transferred to the Breach Candy Hospital by tomorrow i.e. on 20.05.2021 under protection.
2. The Doctors of the Breach Candy Hospital shall after examining the medical problems of Dr. Hany Babu Tharayil including his eye problem, provide the necessary treatment to Dr. Hany Babu Tharayil.
3. The charges of Breach Candy Hospital, its Doctors, the medicines prescribed etc. shall all be borne by the family of Dr. Hany Babu Tharayil.
4. The family will be allowed to communicate with Dr. Hany Babu Tharayil as well as the Doctors attending to him by following the hospital protocol.
5. Place the matter on Board on 09.06.2021 when the Doctors of Breach Candy Hospital shall in a sealed cover submit a report qua the

health status of Dr. Hany Babu Tharayil.

6. If Dr. Hany Babu Tharayil is discharged before the adjourned date, the discharge report of Dr. Hany Babu Tharayil shall be produced before the Court on 09.06.2021.

(SURENDRA P. TAVADE, J.)

(S.J. KATHAWALLA, J.)