

ARUNA RAMCHANDRA SHANBAUG

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v.

UNION OF INDIA AND ORS.

(Writ Petition (Crl.) No.115 of 2009)

JANUARY 24, 2011

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[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Euthanasia/mercy killing: Plea for – Writ petition u/Article 32 of the Constitution on behalf of the petitioner by a next friend – Allegation in the writ petition was that the 60 years old petitioner, who was being looked after by the KEM hospital staff, was in a persistent vegetative state for last 36 years due to brain injury – Prayer for mercy killing on the ground that there was not a slightest possibility of any improvement in her condition and, therefore, the respondents should be directed to stop feeding the petitioner and allow her to die peacefully – Affidavit by the Head of the hospital to the effect that the petitioner has been able to take food in normal course and has been responding by facial expression – Variance between the allegations in the writ petition and the affidavit of the Head of the hospital – In the circumstances, a team of three very distinguished doctors of Mumbai appointed to examine the petitioner thoroughly and to submit a report about her physical and mental condition – The authorities, doctors and staff in the KEM hospital directed to give all assistance and cooperation to this team – The Chief Justice of Bombay High Court also requested to extend all help and cooperation to the team – State Government also directed to provide all facilities to the team of doctors – Constitution of India, 1950 – Article 32.

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CRIMINAL APPELLATE JURISDICTION : Writ Petition (Crl.) No. 115 of 2009.

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Under Article 32 of the Constitution of India.

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A Shekhar Nahphade, Shubhangi Tuli, Vimal Chandra S. Dave for the Petitioner.

Atul Y. Chitale, Suchitra Atul Chitale, Snigdha Pandey, Nishtha Kumar, Sunaina Dutta, Chinmoy Khaldkar, Asha Gopalan Nair for the Respondents.

B The following Order of the Court was delivered

ORDER

Heard learned counsel for the parties.

C Euthanasia is one of the most perplexing issues which the courts and legislatures all over the world are facing today. This Court, in this case, is facing the same issue, and we feel like a ship in an unchartered sea, seeking some guidance by the light thrown by the legislations and judicial precedents of foreign countries.

D The case before us is a writ petition under Article 32 of the Constitution, and has been filed on behalf of the petitioner Aruna Ramachandra Shanbaug by one Ms. Pinki Virani of Mumbai, as a next friend.

E It is stated in the writ petition that the petitioner Aruna Ramachandra Shanbaug was a staff Nurse working in King Edward Memorial Hospital, Parel, Mumbai. On the evening of 27th November, 1973 she was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day on 28th November, 1973 at 7.45 a.m. a cleaner found her lying on the floor with blood all over in an unconscious condition. It is alleged that due to strangulation by the dog chain the supply of oxygen to the brain stopped and the brain got damaged. It is alleged that the Neurologist in the Hospital found that she had planters' extensor, which means damage to the cortex or some other part of the brain. She also had brain stem contusion injury with

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associated cervical cord injury.

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It is alleged at page 11 of the petition that 36 years have expired since the incident and now Aruna Ramachandra Shanbaug is about 60 years of age. She is featherweight, and her brittle bones could break if her hand or leg are awkwardly caught, even accidentally, under her lighter body. She has stopped menstruating and her skin is now like papier mache' stretched over a skeleton. She is prone to bed sores. Her wrists are twisted inwards. Her teeth had decayed causing her immense pain. She can only be given mashed food, on which she survives.

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It is alleged that Aruna Ramachandra Shanbaug is in a persistent vegetative State and virtually a dead person and has no state of awareness, and her brain is virtually dead. She can neither see, nor hear anything nor can she express herself or communicate, in any manner whatsoever. Mashed food is put in her mouth, she is not able to chew or taste any food. She is not even aware that food has been put in her mouth. She is not able to swallow any liquid food, which shows that the food goes down on its own and not because of any effort on her part. The process of digestion goes on in this way as the mashed food passes through her system. However, Aruna is virtually a skeleton. Her excreta and the urine is discharged on the bed itself. Once in a while she is cleaned up but in a short while again she goes back into the same sub-human condition. Judged by any parameter, Aruna cannot be said to be a living person and it is only on account of mashed food which is put into her mouth there is a façade of life which is totally devoid of any human element. There is not the slightest possibility of any improvement in her condition and her body lies on the bed in the KEM Hospital, Mumbai like a dead animal, and this has been the position for the last 36 years.

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The prayer of the petitioner is that the respondents be directed to stop feeding Aruna, and let her die peacefully.

Although, notice had been issued by this Court on

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A 16.12.2009 to all the respondents in this petition, the only counter affidavit which has been filed is that on behalf of the respondent no.3 and 4, the Mumbai Municipal Corporation and the Dean, KEM Hospital. That affidavit, of Dr. Amar Ramaji Pazare, Professor and Head in the said hospital, states in paragraph 6
B that Aruna accepts the food in normal course and responds by facial expressions. She responds to commands intermittently by making sounds. She makes sounds when she has to pass stool and urine which the nursing staff identifies and attends to by leading her to the toilet.

C Thus, there is some variance between the allegations in the writ petition and the counter affidavit of Dr. Pazare.

D In the circumstances we are of the opinion that a team of three doctors should be appointed to examine Aruna Ramachandra Shanbaug thoroughly and give a report to us about her physical and mental condition. For this purpose we are appointing a team of following three doctors :

- E 1. Dr. J.V. Divatia, Professor and Head, Department of Anesthesia, Critical Care and Pain at Tata Memorial Hospital, Mumbai, whose mobile number is 09869077435 and e-mail address is jdivatia@yahoo.com
- F 2. Dr. Roop Gursahani, Consultant Neurologist at P.D. Hinduja Hospital, Mumbai, whose mobile number is 09821087597 and e-mail address is roop_gursahani@hotmail.com
- G 3. Dr. Nilesh Shah, Professor and Head, Department of Psychiatry at Lokmanya Tilak Municipal Corporation Medical College and General Hospital, whose mobile number is 09821788658 and e-mail address is drnilshah@hotmail.com.

H The above team of doctors is requested to examine the petitioner Aruna Ramachandra Shanbaug at the KEM Hospital thoroughly and submit us a detailed report about her physical and

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mental condition so as to enable us to get the correct facts. The team of above mentioned three doctors should preferably submit to us a joint report. They can take the help of any hospital or doctor in Mumbai or elsewhere for the purpose assigned to them by this order. All hospitals/doctors in Mumbai and elsewhere are directed to give all assistance and cooperation to this team of doctors appointed by us, including carrying out any investigation they require. In particular the authorities and doctors and staff in KEM Hospital Mumbai will give all assistance and cooperation to this team so that they may do the work assigned to them by this order, effectively.

The Chief Justice of the Bombay High Court is also requested to kindly extend all help and cooperation to the above mentioned team in any manner they desire. The State Government of Maharashtra will provide all facilities to this team of doctors in any manner they desire including arrangements for their transport, any funds they require for performing their duties under this order, etc.

Issue notice to the learned Attorney General of India who is requested to assist us at the time of the final hearing of this case which is fixed for 22.02.2011, as the first case on the list. Counter affidavits may be filed by that date by the respondents who have not as yet filed them. Mr. T.R. Andhyarujina, learned Sr. Advocate is requested to assist us as amicus curiae in this matter.

The question of *locus standi* of the next friend of the petitioner to move this petition shall also be considered on the date fixed.

Let copies of this order as well as copies of the writ petition and the counter affidavit of Dr. Pazare be sent forthwith to the team of doctors nominated by us. Copies of the same shall also be given to the learned Attorney General of India as well as Mr. T.R. Andhyarujina, Sr. Adv. Copies of this order will also be sent to the doctors appointed by us today to their e-mail address mentioned above.

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Writ Petition adjourned.