

Madras High Court Bats For Mental Health Screening Of Arrestees/ Accused For Remand



The Madurai Bench of Madras High Court has recently underlined how police, prison authorities and remanding magistrates must deal with arrestees/ / prisoners who are persons with mental illness (PMIs).

The expression 'every person' in Article 21 comprises an arrestee/ remand prisoner as well, and Section 20 (1) of the Mental Healthcare Act confers on every PMI the right to live with dignity, the court observed.

About the obligation owed to the arrestees or remand prisoners with mental illness, the court suggests,

"It is time that State revises the protocol regarding medical examination of the arrestees.

The proforma for health screening of prisoners must contain a specific column as regards the mental well being of the arrestee. That column cannot be filled up after posing a formal question to the arrestee. The duty doctor must observe independently and gather inputs from the arrestee's next friend or relative."

Justice G.R Swaminathan was hearing a writ petition filed by the wife of a remand prisoner, requesting proper medical treatment owing to his condition of bipolarity.

In this case, the accused was booked under Section 306 of IPC, Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and SC /ST (POA) Act, 1989 for collecting exorbitant interests from the deceased and abetting his suicide.

During the health screening of the accused, the ENT specialist who was acting as the duty doctor certified that he was fit for remand. Since the accused also didn't indicate any mental health conditions, the police as well as the prison authorities were unaware of his bipolar condition.

Psychiatric ailments are ticking bombs. They lie beneath the surface. Unless they manifest themselves in a concrete manner in the behavior and conduct of the patient, one is hardly aware of it", the court opined about the situation.

The court recorded in its order that when remand prisoners are mentally ill, the same can only be ascertained by their family members or those who are taking care of them. Almost often, the person will be in denial mode, rejecting to adhere to any treatment protocol prescribed, the court noted.

The court referred to a catena of judgments, statutory provisions in the Mental Health Care Act, 2017, research undertaken until now and social commentary to make the stakeholders aware of their obligations to undertrials/ prisoners who are mentally ill.

Referring to Sunil Batra v. Delhi Administration (1978) 4 SCC 494 and Accused X v. State of Maharashtra (2019) 7 SCC 1, Justice G.R Swaminathan assert the inalienable right of prisoners to receive mental health care. Section 103 of the Act demands setting up of a mental health establishment in the medical wing of at least one prison in each state and Union Territory, the court noted referring to the legislation in force.

The court also referred to the guidelines for arrest laid down in D.K Basu v. State of West Bengal (1997) 1 SCC 416, to make a few points about timely intimation of arrest to persons specified and the medical examination of the accused.

"If there are any major or minor injuries present on the body, it must be recorded. Now, there is an expansion of the framework of human rights. The mental wellness of the

arrestee should also be noted. If he or she is found to be mentally ill, the provisions of the Mental Healthcare Act, 2017 will automatically get attracted."

Referring to Section 100 of the Act and the duty of police officer as well as the duty doctor and the judicial officer to ascertain the mental illness of a person, the court observed that the expression "reason to believe" in Section 100 warrants a purposive construction.

"Otherwise, a police officer arresting a mentally ill person can casually take the stand that the accused appeared to him to be a normal person...He has to find out from the person on whom the intimation of arrest is served as to whether the accused is a normal person.", the court said.

Stating that a magistrate cannot afford to be mechanical if it wants to uphold the constitutional liberties of the accused, the court recorded that Section 102 of the Act make the Magistrate responsible for obtaining an assessment regarding the mental health of the arrestee from a competent professional. The court interpreted Section 30 of the Prisoners Act, 1900 which applies to lunatic persons, though the language is archaic, in such a manner that it must be equally applied to persons with mental illness.

Articles 15(2) and 17 of the United Nations Convention on the Rights of Persons With Disabilities, to which India is a signatory, casts an obligation on the state 'to protect persons with disabilities from cruel, degrading or inhuman treatment and punishment.' The court interpreted this obligation as follows:

"If a person with special needs is denied the requisite facilities and amenities, that would certainly amount to cruel and inhuman treatment. For instance, a person with parkinson's disease may not be able to hold a tumbler and he may require a sipper to drink. If he is denied this basic facility, that would certainly constitute cruel and inhuman treatment."

In the present case, noting that the treatment received by the accused was not sufficient, the court has asked the respondent state to shift him to Tirunelveli Medical College and Hospital.

"I make it clear that the scope of this writ petition is confined to upholding the rights of the arrestee having special needs. It has absolutely no bearing on the investigation", the court concluded in the order.

Case Title: Mrs. S v. Superintendent of Prison Thoothukudi District & Ors.

Case No: WP(MD)No.20261 of 2021

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