

Miss Marie Andre Leclerc

Vs

State (Delhi Administration) and Others

Criminal Miscellaneous Petition No. 2646 of 1983 with T.P. (Criminal) No. 55 of 1980

(A. N. Sen, P. N. Bhagwati JJ )

21.07.1983

ORDER

1. This is an application by the petitioner for permission to go back to Canada on the ground that she is suffering from cancer of the left ovary and she has been advised to take chemotherapy. The report of Dr. Telang who performed the operation of the petitioner at the Moolchand Hospital shows that the cancer is in the secondary stage and she is in a very bad state of health. When the application was made before us yesterday we requested Dr. Dhawan of the All-India Institute of Medical Sciences to examine the petitioner and to make a report to us. Dr. Dhawan acceded to our request and examined the petitioner. He has made a report to us today. The report confirms that the petitioner is sick, thin and anaemic and that the positive findings were a mass in the left fornix. The histology slides from the previous operation shows cancer of the left ovary. Dr. Dhawan also states that it was not possible for him to give an independent opinion as to the extent of cancer unless a major operation of the abdomen is done which is not advisable. But, there is no reason whatsoever to doubt the finding given by Dr. Telang who performed the operation of the petitioner at the Moolchand Hospital.

2. We are, therefore, of the view that on humanitarian grounds it is desirable that the petitioner should be permitted to go to Canada which is her home country and where she has her parents and relatives so that she can receive proper treatment and her relations can be by her side. It is also true that the petitioner can obtain treatment for cancer in India as there are facilities for such a treatment but then chemotherapy has to be given as recommended by Dr. Telang. It will be desirable that the parents and other relations of the petitioner in view of the petitioner's state of health are present when chemotherapy is given because it is known that there are cases where chemotherapy has other adverse effects. We would, therefore, permit the petitioner to go to Canada for a period of one year. But, at the same time we have to protect the interests of justice because the petitioner is suffering a sentence of life imprisonment for the offence of murder in one case and there are two other cases pending against her - one in the State of U.P. and the other in the State of Karnataka. We would, therefore, direct that the petitioner be allowed to go to Canada on condition that she files an undertaking in the form of an affidavit to this Court to return to India within one year from the date of her departure from this country. We are informed that the petitioner is on bail in cases which are pending against her in the State of U.P. and the State of Karnataka and as a security for appearance in court there lies deposited a sum of Rs. One lakh in the Sessions Court, Varanasi, Rs. 40,000 in the Court of the Chief Judicial Magistrate, Agra and Rs. 10,000 in the Court of the Judicial Magistrate, Karwad. These three amounts, aggregating to Rupees 1,50,000 (one lakh and fifth thousand rupees) will also remain as security for the return of the petitioner to India within one year from the date of her departure and in addition, personal bonds will be given by her father Allain and Sister Margarete in favour of the Registrar (Judicial Administration) of this Court - each bond being for a sum of Rs.

1,50,000 within one week from today and only after such bonds are given, the petitioner will be entitled to leave India. Father Allain and Sister Margarete are present in Court and they have given their consent to this arrangement as security for the petitioner's return to India after one year. The petitioner will also given an undertaking to the Court in the form of an affidavit that the petitioner will inform the High Commissioner for India in Canada every three months commencing from November 1, 1983 about her whereabouts and address in Canada to forward such information to the Government of India through the Foreigners' Regional Registration Officer, Delhi. If the petitioner commits any breach of this undertaking a sum of Rs. 50,000, out of the sum of Rs. 1,50,000 (mentioned above) will be liable to be forfeited. There will be liberty to apply.

3. The trial of all the accused in the abovementioned courts need not be held up on account of the absence of the petitioner. We may make it clear that we are making this order only in view of the fact that the petitioner is suffering form cancer which is in the secondary stage and we feel that in circumstances it is necessary for her to be with her parents and relations.

</html