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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.5480 of 2022

Date of Decision: 08.04.2022

MANPREET KAUR

.....Petitioner

Vs

STATE OF PUNJAB AND ORS

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Surinder Kaur, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. D.A.G., Punjab
for respondents No.1 & 3.

Mr. Manmeet Singh Bindra, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus directing respondent No.2 to conduct surgery of renal transplant of husband of the petitioner by receiving the organ from the petitioner-wife without any further delay.

Marriage of the petitioner was solemnized with Surjit Singh on 12.12.2021 according to Anand Karaj ceremony. After the marriage, the health of Surjit Singh started deteriorating and he was diagnosed to be suffering from both kidneys failure. He

was advised to undergo kidney transplantation by respondent No.2.

Admittedly, condition of Surjit Singh is very serious as of now. Petitioner being wife of Surjit Singh came forward to donate one of her kidneys for her husband. Petitioner and her husband have been subjected to all necessary medical tests as advised by respondent No.2. In all the tests, it has been found by respondent No.2 that the petitioner is fit enough to donate kidney to her husband to save his life. Petitioner is also satisfied that a person with one kidney may lead normal and healthy life, therefore, she took this stand to save life of her husband.

After all the medical tests, respondent No.2 has also verified the physical as well as mental state of health of the petitioner. Even counselling of the petitioner was conducted by psychiatrist to verify the mental state of health of the petitioner. As per opinion of the psychiatrist, the petitioner does not suffer from any psychiatric ailment. Respondent No.2-Hospital constituted a competent authority, comprising of four members for the purpose of authorization of kidney transplantation between near relatives. The case of the petitioner was placed before the aforesaid authorization committee and the committee has rejected the same on the ground of short duration of marriage.

Notice of motion was issued on 17.03.2022. In

pursuance of the notice, respondents have appeared.

On a pointed query, learned counsel for the respondents could not show any such bar under the rules that a newly wedded wife like the petitioner cannot donate one of her kidneys to her ailing husband. Respondent No.2 has not pointed any foul play at the behest of donor or donee in order to circumvent any provision of law or for any extraneous consideration or commercial transaction between the parties in any manner.

Admittedly condition of husband of the petitioner is very serious, who is already on dialysis on day to day basis since long. The identity and consent of the petitioner as required under rule 22 of the Transplantation of Human Organs Rules, 2014 have already been verified by the respondents. No other consent of any parents or siblings of donor is required to be obtained in view of **Karamjit Kaur vs. State of Punjab and others CRWP No.1845 of 2019** decided on 15.06.2020.

Police verification in the present case shows that there is no element of greed or any kind of pressure being exerted upon the petitioner to donate her kidney. In **Jaswinder Singh vs. State of Punjab and others, 2008(3) R.C.R. (Criminal) 93** the rejection of donation of kidney by a person, who was not even a relative of the recipient was set aside being not having

any conclusive material. The apprehension alone in respect of monetary transaction was held not sufficient and it was held that human conduct in such like situation cannot be measured in any mathematical terms and approval cannot be denied on mere suspicion.

In the instant case, petitioner is wife of the recipient. The statutory provisions have been promulgated to prevent trafficking and commercial practices. Every care/caution has to be taken to prevent exploitation of any kind. Petitioner is legally wedded wife of the recipient. There is no material on record to indicate any malpractice or any element of greed or pressure being exerted upon the petitioner. The condition of husband of the petitioner is very serious.

Learned counsel for respondent No.2 very fairly submits that there is no disqualification attached to the petitioner for donating her one of the kidneys to her husband, who is in dire need of the same. There is no legal bar to the aforesaid course.

Admittedly, petitioner and her husband are not foreign nationals. The authorization committee has only rejected the case of the petitioner for kidney transplantation due to short duration of marriage. Evidently, the duration of marriage is not a ground to discard the willingness of one of the spouse, to donate kidney in favour of other spouse, particularly when the

case of the petitioner has been verified on all legal parameters. Marriage has already been registered with the Marriage Registrar and a marriage certificate has been duly issued in favour of the couple.

Keeping in view the aforesaid facts and circumstances, the competent authority is directed to conclusively decide the application submitted by the petitioner for donation of kidney by the petitioner to the recipient i.e. her husband and allow transplantation of the same to be done by respondent No.2 at the earliest, keeping in view the medical state of health of Surjit Singh (husband of the petitioner).

With the aforesaid direction, this petition is disposed of.

April 08, 2022

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Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No