

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 14608 of 2026

Sunita Khara

Vs.

State of West Bengal & Ors.

Mr. Aritra Basu

Ms. Maitree Roy

....For the petitioner.

Mr. Falguni Bandyapadhyay

Mr. Rohit Banerjee

Ms. Riya Ballab

....For the State.

Mr. Saurendra Betal

....For the Respondent No.7.

Mr. Uttam Kumar Mandal

....For the Respondent No.8.

Hearing Concluded On : 22.07.2026

Judgment Delivered On : 30.07.2026

Judgment Uploaded On : 30.07.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition praying for a direction upon the respondent no.6 and the Authorization Committee, Government of West Bengal, to immediately consider and grant necessary approval for the renal transplantation of the petitioner's husband, who has been diagnosed with End Stage Renal Disease and is in urgent need of a kidney transplant.
2. The petitioner's husband, namely, Chintu Khanra, who is aged about 48 years, and is suffering from End Stage Renal Disease and is bed-ridden. The husband of the petitioner was clinically examined by the doctors of Rabindranath Tagore International Institute of Cardiac Sciences (hereinafter referred to as "R.N. Tagore Hospital"), a unit of Narayana Health Multispecialty Hospital Pvt. Ltd. and issued a certificate advising Kidney Transplant as a definitive treatment for the renal disease of the patient.
3. The respondent no.7, Rupa Saha, being a family friend of the husband of the petitioner voluntarily agreed to donate one kidney to the husband of the petitioner out of her natural love and affection on humanitarian ground. The petitioner's husband filed an application in Form No.11 along with all necessary documents for Approval of Transplantation from Living Donor duly signed by the prospective donor and recipient.
4. Mr. Aritra Basu, Learned Advocate representing the petitioner submits that the donor and her guardian, i.e. her father, have also executed an

affidavit before the Learned 1st Class Judicial Magistrate affirming that the respondent no. 7 is donating her kidney to the husband of the petitioner out of compassion, without any pressure or financial consideration, solely to save a needy person.

5. Mr. Basu submits that pursuant to the notice dated 5th June, 2026, the petitioner along with the proposed donor and donor's guardian appeared before the Organ Transplantation Authorization Board on 9th June, 2026, with all relevant documents but it was informed to the petitioner verbally that the case of the husband of the petitioner is not recommended for kidney transplantation.
6. Mr. Basu submits that the respondent authorities without assigning any reasons refused the request of the husband of the petitioner for kidney transplantation. He submits that the husband of the petitioner has submitted all required documents along with an affidavit of the proposed donor and her guardian but the respondent authorities without assigning any reason not recommended the case of the petitioner for kidney transplantation.
7. Mr. Basu has relied upon the judgment passed by this Court in the case of ***Niraj Kumar Sonthalia Vs. State of West Bengal and Ors.*** in ***WPA No. 5037 of 2026*** dated ***6th March, 2026***, wherein this Court held that the donor has voluntarily come to donate his organ to save the life of the wife of the petitioner being the well-wisher and also

affirmed an affidavit before the Learned Magistrate and also verified by the police authorities.

8. Mr. Basu has also relied upon the judgment in the case of ***Sudha Mathesan and Another Vs. Authorization Committee (Transplantation), rep. by its Chairman and Another*** reported in ***2024 SCC OnLine Mad 1633*** and submits that unless there is definite material to establish that there are financial dealings involving the parties, permission ought not to be withheld or rejected. If the donor states that out of love and affection, she is making donation, in the absence of any credible reason, the averment should not be doubted.

9. Mr. Basu has relied upon the judgment in the case of ***V. Periasamy Vs. The Chairman, Office of the Chairman Organization Committee, Directorate of Medical Education and Ors.*** reported in ***MANU/TN/3743/2025*** and submits that it is incomprehensible as to how the family friends can establish their relationship through documents. Emotion plays a part in a relationship involving friends and it is not determined through documentation.

10. Mr. Basu has relied upon the judgment in the case of ***Ratnakar Peddada and Others Vs. State of Telangana and Others*** reported in ***MANU/HY/0103/2018*** and submits that the Authorization Committee has to inquire whether there has been a commercial transaction between the donor and the recipient. If the result of the inquiry is in the

negative, then evaluating the evidence on record, it has to grant approval for transplantation.

11. Mr. Basu has relied upon the judgment in the case of ***Kuldeep Singh and Another Vs. State of T.N. and Others*** reported in ***(2005) 11 SCC 122*** and submits that the Committee shall be in a better position to ascertain the true intent and the purpose for the authorization to remove the organ and whether any commercial element is involved or not.
12. Mr. Falguni Bandyapadhyaya, Learned Advocate, representing the State submits that two member verification committee has been constituted in order to support and assist the functioning of the Authorization Committee with additional input and information under the Transplantation of Human Organs and Tissues Act, 1994. The proposal for permission of renal transplantation of the husband of the petitioner was submitted on 29th October, 2025. The verification committee submitted report along with police report after examination of the donor and her guardian. On receipt of verification report, the authorization committee did not find any special reason for willingness of the donor to donate one of her kidney to the recipient and have not recommended for organ transplantation.
13. The verification committee after examination of the petitioner, donor and her guardian, had submitted report on 15th May, 2026, which reads follows:

1) <i>Whether there is any commercial transaction between the donor and recipient</i>	<i>Nothing Established</i>
2) <i>Whether any pecuniary promises have been made to the donor or any other person for this organ donation.</i>	<i>Nothing Established</i>
3) <i>Nature of link between non-related donors and recipients.</i>	<i>As per verbal statement husband of the donor Worked as a driver but he is missing since January 2025. GD has been done by the donor.</i>
4) <i>How donor come to contact of recipient</i>	<i>As per verbal statement husband of the donor Worked as a driver but he is missing since January 2025. GD has been done by the donor.</i>
5) <i>Documentary evidence of the link, if any</i>	<i>Not submitted any Documents</i>
6) <i>Reason why the donor desires to donate</i>	<i>Humanitarian Ground</i>
7) <i>Identity photograph showing the donor and recipient together</i>	<i>Yes</i>
8) <i>Whether there is any middle men/tout involved</i>	<i>Nothing established</i>
9) <i>Financial status of the donor and recipient</i>	<i>Donor- Monthly Income – 6,000/- (Six Thousand) Recipient-Monthly Income – 75,000/- (Seventy-Five Thousand) Legal Guardian of Donor-Monthly Income – 2,000/- (Two Thousand)</i>
10) <i>Whether donor is a drug addict</i>	<i>No</i>

11) Profile verification report	Receiver by Deputy – Superintendent of Police, DIB Barasat Police District. Ref-memo. No.-DC-329/DIB BST PD, Date-31/01/2026
12) Interview report of the next of the kin of the proposed non-related donor regarding the awareness about his intention to donor, the authenticity of the link between the donor and the donor and the recipient and the reason for donation	Next of the kin is aware

It is not clear how both the parties came in contact and became family friend or Driver. No documentary evidence or any photograph was produced. Hence link between both the parties could not be ascertained. Hence not Recommended.”

14. The police authority has submitted report which reads as follows:

“Barasat P.D.

Ref: Memo No – DC-779, dated- 15.01.2026.

Sub: Verification report of authentication of antecedent of Recipient Mr. Chintu Khanra and donor Mrs. Rupa Saha (39 years) and legal guardian her father Mr. Dilip Saha of the donor of human organ.

Respected Sir,

With due respect, I beg to informed you that as per your kind order I have enquired the matter. During enquiry I had been to the Vill – East Kamarthuba, P.O + P.S- Habra, North 24 Parganas, Pin – 743263. to enquired the matter physically.

During enquiry it is revealed that:

- 1) There is no blood relation with the donor and recipient could be established.*

- 2) *No possibility of official dealing could be established.*
- 3) *Nothing could be established.*

This is for your kind information.

Yours faithfully

*SI Sujit Dewan
DIO Habra*

- 15.** This Court has called for the video recording of the verification committee wherein the verification committee examined the wife of the recipient, the donor and her guardian. In the report submitted by the verification committee at Serial Nos. 3 and 4, it is recorded that “*As per verbal statement husband of the donor worked as a driver but he is missing since January 2025. G.D. has been done by the donor*”.

This Court perused the recording of the verification committee wherein several questions were put to the proposed donor. The verbatim of the statement of the donor is as follows:

“1) *Where this Kidney transplant is going to take place?*

Answer:- *R.N. Tagore, under Dr. Deepak Shankar Ray. (Answered by the wife of the recipient)*

➤ **Answered by Rupa Saha:**

2) *Who is Rupa Saha?*

Answer:- *I am, Sir*

3) *Where is Rupa Saha residing?*

Answer:- *Habra*

4) *Is the recipient's house at Belur, Howrah?*

Answer:- Yes.

5) *How do you know the recipient?*

Answer:- Through my husband, since my husband used to work under the recipient as their driver since the year 2014-2015.

6) *What does your husband do now?*

Answer:- No, He's not working currently.....

7) *If his is not working, how is he able to feed himself and his family?*

Answer:- He has worked for a longtime, that's why **we have some savings (unclear words).**

8) *How much have recipient and his family, offered to pay for kidney donation?*

Answer:- They haven't paid anything at all, and I also haven't asked for any money, since money is not the main purpose of life and there has been no involvement of money in this matter. If you come to my house you can see that I am the only child of my father, and my father owns a two-storied building on three cottahs of land. My father also has a shop as well. I am financially independent. I have a job and I own a house.

9) *So, if not money, have they offered anything else in return of the donation?*

Answer:- No. I am a follower of Shri Premanand Maharaj, he's also suffering from kidney issues and many of his followers has offered to donate kidney to him, but he has refused. So, I take him as my inspiration and I want to help someone.

10) *Where's your husband now?*

Answer:- I don't know. He's missing.

11) *Since when he's missing?*

Answer:- since 4th January, 2025.

12) Whether any report has been lodged before the concerned police station regarding the missing of your husband?

Answer:- Yes, at Habra Police Station. Several communications have also taken place between the concerned police station and me.

13) Do you have any children?

Answer:- Yes, I have a son, who's currently studying in class 7.

14) How do you manage your family's expenses?

Answer:- I work a casual job in the Municipality, I also do home delivery services and I run my small jewelry business.

15) How did you get to know the recipient and his family?

Answer:- Since my husband used to work there, we have visited their house on multiple occasions, as well as they have come to visit my house including the time of my "Griha Pravesh Puja".

16) Is there any documentary evidence to prove the good relations between the recipient and his family, and you?

Answer:- No, there isn't any documentary evidence to prove such relation. It is just the fact that the recipient and his family have visited my house on multiple occasions.

17) Why did you agree to donate a kidney? Are you aware that donating one kidney can be life-threatening in certain situations and may also lead to increased expenses if your health deteriorates and there are associated health risks?

Answer:- I have consulted with the doctors and I am aware of every risk. Firstly, when I met with the wife of the recipient, she had shared

that her husband is suffering and is in dire need of a kidney transplant, and as such they have advertised in all the news papers as well. Afterwards, I myself decided and volunteered and since my blood group is also O+, is there any possibility if I donate a kidney. Thereafter, the wife of the recipient, me and my father, had discussed with the doctors and the doctors advised that donating one kidney will not be a problem and it will also save somebody's life.

18) The doctor present here today is pointing out himself that it will be a life-risk if you agree to donate a kidney, you are a single mother, and you also have a young son who's now studying in class 7, and your father is also quiet old. So, in case if you fall sick, who will take care of him? I, myself is a doctor, and I am explaining it to you that donating a kidney may be life-threatening and anything can happen to you while you are in the operation theatre, are you aware that you will be given anesthesia and several other medications?

Answer:- Yes

19) What is your name? **(Question asked to the donor's father)**

Answer:- Dilip Saha.

19) Are you also aware of the risks being taken by your daughter? Why are you agreeing for your daughter to face such danger? **(Question asked to the donor's father)**

Answer:- I am aware of every risk. This is not a danger, this is a help.

➤ **Answered by Rupa Saha:**

20) Have you submitted your photograph?

Answer:- Yes, along with all the details.

21) Have you submitted your income certificate?

Answer:- Yes.

22) *Do you take any medication?*

Answer: No, I don't.

23) *Do you know anyone who introduced you to the family of the recipient considering their crisis?*

Answer:- No.

24) *Being her father, are you aware that the act of your daughter involves life risk, and that she may also die inside the operation theatre?*

(Question asked to the donor's father)

Answer:- Yes. I think it's her fate. If her fate permits she will be absolutely fine and if not she might die. She's trying to save somebody's life and I think it's a great deed."

16. It is admitted that the donor is not a near relative of the recipient. The donor and recipient are unrelated to each other but it is the case of both the parties that they are family friends. The donor and her guardian have executed an affidavit before the Learned 1st Class Judicial Magistrate. In the affidavit of donor, it is stated that "*She is donating her kidney to the recipient out of compassion, without any pressure or financial consideration, solely to save a needy person*". The guardian of the donor has stated that "*He has no objection if his daughter donates her kidney to the recipient*".

17. Section 2(f) defines Donor and 2(i) of the Transplantation of Human Organs and Tissues Act, 1994, defines near relative which reads as follows:

“2(f) *“donor means any person, not less than eighteen years of age, who voluntarily authorizes the removal of any of his [human organs or tissues or both] for therapeutic purposes under sub-section (1) or sub-section (2) of section 3;*

2(i) *[“near relative” means spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson or granddaughter;]”*

- 18.** Section 9 of the Transplantation of Human Organs and Tissues Act, 1994, provides restrictions on removal and transplantation of human organs or tissues or both. In the present case, Sub-Section (3) of Section 9 is relevant, which reads as follows:

“9. (3) *If any donor authorises the removal of any of his [human organs or tissues or both] before his death under sub-section (1) of section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reasons of affection or attachment towards the recipient or for any other special reasons, such [human organ or tissue or both] shall not be removed and transplanted without the prior approval of the Authorisation Committee.”*

- 19.** As per Act of 1994, there is no restriction for donation of kidney in favour of a person who is not a near relative but the only restriction is that transplantation can be done only after prior approval of the State Authorization Committee.

- 20.** Rule 7 defines “Authorization Committee”. In the present, case Sub-Rule (3) of Rule 7 is relevant, which reads as follows:

“7. Authorisation Committee. –

(3) *When the proposed donor and the recipient are not near relatives, the Authorisation Committee shall,-*

- (i) evaluate that there is no commercial transaction between the recipient and the donor and that no payment has been made to the donor or promised to be made to the donor or any other person;*
- (ii) prepare an explanation of the link between them and the circumstances which led to the offer being made;*
- (iii) examine the reasons why the donor wishes to donate;*
- (iv) examine the documentary evidence of the link, e.g. proof that they have lived together, etc.;*
- (v) examine old photographs showing the donor and the recipient together; (vi) evaluate that there is no middleman or tout involved;*
- (vi) evaluate that financial status of the donor and the recipient by asking them to give appropriate evidence of their vocation and income for the previous three financial years and any gross disparity between the status of the two must be evaluated in the backdrop of the objective of preventing commercial dealing;*
- (vii) ensure that the donor is not a drug addict;*
- (viii) ensure that the near relative or if near relative is not available, any adult person related to donor by blood or marriage of the proposed unrelated donor is interviewed regarding awareness about his or her intention to donate an organ or tissue, the authenticity of the link between the donor and the recipient, and the reasons for donation, and any strong*

views or disagreement or objection of such kin shall also be recorded and taken note of.”

21. In the case of ***Kuldeep Singh (supra)***, the Hon’ble Supreme Court held that:

“12. Where the donor is not “near relative” as defined under the Act the situation is covered by sub-section (3) of Section 9. As Form 1 in terms of Rule 3 itself shows, the same has to be filed in both the cases where the donor is a near relative and where he is not, so far as the recipient is concerned. In case the donor is not a near relative the requirement is that he must establish that removal of the organ was being authorised for transplantation into the body of the recipient because of affection or attachment or for any special reasons to make donation of his organ. As the purpose of enactment of the statute itself shows, there cannot be any commercial element involved in the donation. The object of the statute is crystal clear that it intends to prevent commercial dealings in human organs. The Authorisation Committee is, therefore, required to satisfy that the real purpose of the donor authorising removal of the organ is by reason of affection or attachment towards the recipient or for any other special reason. Such special reasons can by no stretch of imagination encompass commercial elements. Above being the intent, the inevitable conclusion is that the Authorisation Committee of the State to which the donor and the donee belong have to take the exercise to find out whether approval is to be accorded. Such Committee shall be in a better position to ascertain the true intent and the purpose for the authorisation to remove the organ and whether any commercial element is involved or not. They would be in a better position to lift the veil of projected affection or attachment and the so-called special reasons and focus on the true intent. The burden is on the applicants to establish the real intent by placing relevant materials for consideration of the Authorisation Committee. Whether there exists any affection or attachment or special reason is within the special knowledge of the applicants, and a heavy burden lies on them to

establish it. Several relevant factors like relationship if any (need not be near relationship for which different considerations have been provided for), period of acquaintance, degree of association, reciprocity of feelings, gratitude and similar human factors and bonds can throw light on the issue. It is always open to the Authorisation Committee considering the application to seek information/materials from the Authorisation Committees of other States/State Governments, as the case may be for effective decision in the matter. In case any State is not covered by the operation of the Act or the Rules, the operative executive instructions/government orders will hold the field. As the object is to find out the true intent behind the donor's willingness to donate the organ, it would not be in line with the legislative intent to require the Authorisation Committee of the State where the recipient is undergoing medical treatment to decide the issue whether approval is to be accorded. Form 1 in terms requires the applicants to indicate the residential details. This indication is required to prima facie determine as to which is the appropriate Authorisation Committee. In the instant case, therefore, it was the Authorisation Committee of the State of Punjab which is required to examine the claim of the petitioners."

- 22.** In the present case, the donor has executed an affidavit before the Learned 1st Class Judicial Magistrate and the verification committee has also examined the donor. The police have also submitted a report. On consideration of all, the verification committee has come to the conclusion that commercial transaction between the donor and recipient is not established. The verification committee has not submitted report preparing as per the statement made by the donor at the time of examination of the donor. The donor in her statement categorically stated that she is the follower of Shri Premanand Maharaj and she inspired with Maharaj and she want to help someone. She has

also stated that though there is no documentary evidence to prove relationship but the husband of the donor used to work as driver of the recipient and they also used to visit her home including at the time of “Griha Prabesh”.

- 23.** The Verification Committee has also not considered the income of the donor and her guardian. During examination of the donor by the verification committee, she has stated that they are having two storied building and other sources of income but the same has not been recorded by the verification committee. In the affidavit, the donor has stated that she is having the income of Rs. 1,20,000/- approximately but the same has not been considered by the committee.

- 24.** In the case of **V. Periasamy (supra)**, the Madras High Court has held that:

“15. A careful reading of the above report dated 13.6.2025 would show that the donor was working under the petitioner and that their family became close to the family of the petitioner. Therefore, it was claimed that they are family friends. However, the third respondent has given a finding to the effect that no documents have been filed to establish that the family of the donor and the family of the recipient namely the petitioner are family friends. The third respondent is expecting the petitioner to prove the negative.

16. It is incomprehensible as to how the family friends can establish their relationship through documents. Emotion plays a part in a relationship involving friends and it is not determined through documentation. Hence, the very basis, on which, the report has been given by the third respondent, lacks sound reasoning.

17. It is also seen from the records that all the other relevant forms have been filed along with the certificate and the only ground that has been put against the petitioner is that the third respondent has come to the conclusion that the donor and the recipient did not establish through the documents that they are family friends. The decision taken by the first respondent - Committee purely on the basis of the report of the third respondent - Committee does not satisfy the mandatory requirements under Rule 23 of the Rules. There is no independent application of mind and the decision taken by the first respondent - Committee suffers from error of law apparent on the face of the impugned order.”

25. In the case of **Sudha Mathesan (supra)**, the Madras High Court held that:

“17. Let us put ourselves in the shoes of the applicants. They can only assert that there is no commercial dealing. They cannot be called upon to prove the negative. Rule 17 provides for scrutiny of application. In case of doubt, explanation can be sought from the applicants and there can also be verification done through the officials of the Government. Too much of burden cannot be laid on the shoulders of the applicants. Unless there is definite material to establish that there are financial dealings involving the parties, permission ought not to be withheld or rejected. If the donor states that out of love and affection, he/she is making the donation, in the absence of any credible reason, the averment should not be doubted. The Government must come out with definite guidelines in this regard. Otherwise, the issue will be left to the arbitrary discretion of the Authorisation Committee. If the recipient is well placed and connected, the decision of the committee will swing in his favour. If the recipient is not all that influential, by passing a template order, permission can be rejected. One must take note of the fact that parliament never intended to rule out donation by non-near relatives. The parliamentary intent ought not to be frustrated by adopting a rigid approach. One need not take a cynical view that a non-near

relative will not donate out of altruistic considerations.”

- 26.** In the present case, admittedly there is no commercial transaction between the donor and the recipient. The only issue is that the donor is not a near relative. The donor is agreeable to donate her kidney to the recipient. As per affidavit, executed before the Learned 1st Class Judicial Magistrate out of compassion, the donor is agreeable without any pressure or financial consideration, solely to save a needy person she is donating her kidney. It is also the case of the donor that due to love and affection and on humanitarian ground, she is ready to donate her kidney to the recipient. The verification committee has not considered all the documents submitted by the donor and has also not considered the statement made by her during her examination by the verification committee.
- 27.** This Court finds that the verification committee has not considered the statement of the donor properly, affidavit executed by the donor before the Learned 1st Class Judicial Magistrate, the reasons for which the donor is ready to donate her organ to the recipient and income of the donor.
- 28.** In view of the above, the report of the verification committee dated 15th May, 2026 and the decision taken by the Authorization Committee for not recommending the proposal of the donor are set aside and quashed. The Authorization Committee is directed to reconsider the statement of the donor, her father, the police report and to take fresh decision within

a period of one (1) week from the date of receipt of the copy of this judgment and to communicate the same to the petitioner immediately.

29. WPA No. 14608 of 2026 is allowed.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)