



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

**CWP-4571-2025 (O&M)
Reserved on: 29.05.2025.
Pronounced on: 03.07.2025.**

SUREKHA

... Petitioner

Versus

AXIS BANK AND ORS.

... Respondents

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Brijeshwar Singh Bhalla, Advocate for the petitioner.

Mr. Aftab Singh Khara, Senior Deputy Advocate General,
Punjab.

Mr. Anant Kataria, Deputy Advocate General, Haryana.

Mr. Munish Bansal, Public Prosecutor, U.T., Chandigarh.

Mr. D.K. Singal, Advocate for respondent/Bank.

ANUPINDER SINGH GREWAL, J.

1. The petitioner is seeking issuance of a writ in the nature of mandamus to declare herself as the guardian of Rohit Kumar, who is her son and is presently stated to be in a vegetative/comatose state.

2. It is submitted that Rohit Kumar had taken a gold loan after pledging certain gold articles. Later, he met with an accident and sustained serious injuries to his head, which left him in a vegetative state, unable to perform normal functions which is evident from the medical reports at Annexure P-4. Learned Counsel has sought a writ to be issued in the nature of mandamus declaring the petitioner, who is the mother of Rohit Kumar as his guardian,



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in order to enable her to operate the loan account of Rohit Kumar. Counsel relies upon the judgment of the Division Bench of the Bombay High Court in the case of **Philomena Leo Lobo versus Union of India and others, 2017 SCC (Online) Bom 8836** in support of his submission that this Court is empowered by virtue of Article 226 of the Constitution to declare the petitioner as the guardian of her adult son who is in a vegetative/comatose state.

3. Whereas, learned counsel for respondents No.1 to 3 (Bank) submitted that Rohit Kumar, who is the son of the petitioner, had availed a gold loan from the respondent-Bank after pledging the gold ornaments. The borrower did not maintain financial discipline in respect of the loan account and, therefore, notice was issued on 27.11.2024 calling upon him to pay the outstanding amount of Rs.4,25,890/- on or before 29.12.2024, failing which the Bank would auction the gold ornaments. Now an amount of Rs.4,00,000/- had been deposited in the loan account by the petitioner and balance amount of Rs.25,890/- is payable against the loan account. The petitioner had moved a representation seeking release of the pledged articles in her favour on account of her son's incapacity. To safeguard itself from legal issues, the Bank had asked the petitioner to secure a court order declaring her as the legal guardian of Rohit Kumar. He further submitted that in the event of this Court appointing the petitioner as guardian, the petitioner be directed to deposit the outstanding amount along with interest and other charges to enable the respondent-Bank to release the pledged gold ornaments.

4. Heard.



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5. Rohit Kumar, who is the son of the petitioner, is stated to have availed a Gold Overdraft facility of Rs.3,75,200/- on 29.09.2023, for a fixed term of 12 months from respondent No.3-Axis Bank by pledging certain gold articles. Unfortunately, three months later, he met with an accident on 08.12.2023 and suffered serious injuries to his head. The medical report is available on the record as Annexure P 4. A FIR No.77 dated 15.12.2023 under Section 279 IPC was registered at Police Station Talwandi Bhai, District Ferozepur with regard to the accident and copy thereof is at Annexure P-3.

6. The medical records of Rohit Kumar have been annexed and relevant extract of the aforesaid medical records is reproduced hereunder:

“PRIVATE OPD CARD

*DAYANAND MEDICAL COLLEGE AND HOSPITAL,
LUDHIANA*

Xxxxx

Remarks:- Patient is not fully conscious, not able to communicate with others. Not able to understand, not able to sign. He is bedridden.

Sd/-”

In the medical records there is also a reference to the status of Rohit Kumar at the time of his discharge. Relevant extract is reproduced below:-

“xxxxxx

Condition at the time of discharge:

Patient GCS E4 VTR M4, PUPILS B/L REACTIVE TO LIGHT, PATIENT ACCEPTING RT FEED, VOIDING BY EXTERNAL CATHETER AND AMBULATORY ON WHEEL CHAIR. SUTURES REMOVED AND WOUND CONDITION IS HEALTHY, TRACHEOSTOMY TUBE IN-SITU.”

7. GCS which is the abbreviation for Glasgow Coma Scale, is a neurological scale used by medical experts to assess a person's



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consciousness. Ever since the accident, Rohit Kumar has been undergoing treatment, but is bedridden and unable to communicate or comprehend everyday matters and is in a state akin to a comatose/vegetative state.

8. Respondent-Axis Bank issued notice dated 27.11.2024 to the borrower-Rohit Kumar stating that the loan account had become irregular and Rs.4,25,815/- was outstanding against the same. It was also mentioned that if the amount was not paid on or before 17.12.2024 the gold articles pledged with the bank would be auctioned. Admittedly, the petitioner has deposited a sum of Rs.4 lakhs on 17.12.2024 against the demand notice. On the same date, the petitioner had also submitted an application to the officials of the respondent no.3-Axis Bank seeking permission to repay the loan obtained by her son and that on her doing so, the gold articles deposited with the bank be released in her favour. Affidavits dated 17.12.2024 of the father and brother of Rohit Kumar were also submitted to the bank, stating that they have no objection if the gold articles are released to the petitioner. In response to the application of the petitioner, respondent No.3 sent an e-mail (Annexure P-11) to the petitioner asking her to approach a Court for her appointment as a guardian to enable her to operate/close the account.

9. The petitioner had initially filed CWP-3539-2025, seeking directions to the respondent-Axis bank to recognize her as the legal guardian of her major son but vide order of this Court dated 11.02.2025, liberty was granted to the petitioner to withdraw that writ and file a fresh one with better particulars.

10. This Court, by order dated 19.02.2025 had issued notice and had directed respondent No.5-SDM, Ferozepur to get Rohit Kumar medically



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examined by a Board of Doctors to be constituted by the Civil Surgeon, Ferozpur with regard to his physical and mental condition.

11. On the next date of hearing, learned State counsel had submitted that the family members did not permit the ambulance to take the son of the petitioner to the hospital. He had, therefore, sought some more time so that the teams of doctors could visit the residence of the petitioner and directions of the court could be complied with. Thereafter, learned State counsel had filed a short affidavit of the Sub-Divisional Magistrate, Ferozpur dated 07.04.2025 along with the report of the Board of Doctors dated 12.03.2025 with regard to the medical condition of Rohit Kumar. However, the report appeared to be somewhat vague and did not categorically state as to whether Rohit Kumar was in a comatose/vegetative state and therefore, unable to operate the loan account.

12. This court vide order dated 08.04.2025, had, therefore, directed respondent No.4- Deputy Commissioner, Ferozpur to constitute a Board of Doctors to examine Rohit Kumar at his residence and submit a report as to whether he was in a comatose/vegetative state and unable to operate the loan account. Thereafter, learned State counsel has filed a short affidavit of the Deputy Commissioner, Ferozpur dated 16.04.2025 along with a medical examination report the Board of Doctors, which is taken on record. The relevant extract of the medical examination report is reproduced hereunder:

“xxxxx

Today on 10.04.2025, the undersigned Board Members visited the residence of Mr. Rohit Kumar who was medically examined and the report is as follows.

Patient Rohit Kumar son of as per record, presented a case of post road side accident (RSA) having subdural haemorrhage



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right frontal tempo parietal and left frontal with post traumatic hydrocephalus for which decompressive craniotomy (09.12.23) with VP shunting (18.03.2024) was done at DMC hospital, Ludhiana and is currently under follow up treatment from the same hospital.

*The Board is of the opinion that at present the patient is tracheostomized, unable to speak and on Ryles tube feed. **The patient is in a vegetative state, but the possibility of he recovering from the present condition cannot be ruled out.***

It is, therefore, evident from the report that Rohit Kumar is, in fact, in a vegetative state.

13. Once there is a positive affirmation that Rohit Kumar is in fact in a vegetative state, the only question that needs to be resolved is whether the petitioner being the mother of Rohit Kumar is entitled to a writ of mandamus being issued declaring her to be his guardian?

14. The judgment by the Supreme Court in the case of **Aruna Ramchandra Shanbaug vs Union Of India & Ors, 2011 (4) SCC 454**, is perhaps the first judgement concerning a person in a comatose/vegetative case. In 2009, Ms. Pinki Virani (claiming to be the next friend of Nurse Aruna Ramchandra Shanbaug, who was stated to be in a persistent vegetative state) filed a writ petition under Article 32 of the Constitution of India, seeking directions to the respondents to stop feeding Aruna Shanbaug, and let her die peacefully. The Supreme Court had examined the legality of ending the life of a person in a persistent vegetative state. In this judgment, the Supreme Court had extracted the meaning of the technical terms like 'brain death', 'coma', 'vegetative state' and 'minimally conscious stage' from the literature furnished by the panel of expert doctors nominated by it. Relevant extract of the same is reproduced as under:



“Xxx

Brain death

A state of prolonged irreversible cessation of all brain activity, including lower brain stem function with the complete absence of voluntary movements, responses to stimuli, brain stem reflexes, and spontaneous respirations.

Explanation: This is the most severe form of brain damage. The patient is unconscious, completely unresponsive, has no reflex activity from centres in the brain, and has no breathing efforts on his own. However the heart is beating. This patient can only be maintained alive by advanced life support (breathing machine or ventilator, drugs to maintain blood pressure, etc). These patients can be legally declared dead ('brain dead') to allow their organs to be taken for donation.

Aruna Shanbaug is clearly not brain dead.

Coma

Patients in coma have complete failure of the arousal system with no spontaneous eye opening and are unable to be awakened by application of vigorous sensory stimulation.

Explanation: These patients are unconscious. They cannot be awakened even by application of a painful stimulus. They have normal heart beat and breathing, and do not require advanced life support to preserve life.

Aruna Shanbaug is clearly not in Coma.

Vegetative State (VS)

The complete absence of behavioral evidence for self or environmental awareness. There is preserved capacity for spontaneous or stimulus-induced arousal, evidenced by sleep-wake cycles. .i.e. patients are awake, but have no awareness.

Explanation: Patients appear awake. They have normal heart beat and breathing, and do not require advanced life support to preserve life. They cannot produce a purposeful, co-ordinated, voluntary response in a sustained manner, although they may have primitive reflexive responses to light, sound, touch or pain. They cannot understand, communicate, speak, or have emotions. They are unaware of self and environment and have no interaction with others. They cannot voluntarily control passing of urine or stools. They sleep and awaken. As the centres in the brain controlling the heart and breathing are intact, there is no threat to life, and patients can survive for many years with expert nursing care. The following behaviours may be seen in the vegetative state:



Sleep-wake cycles with eyes closed, then open

Patient breathes on her own

Spontaneous blinking and roving eye movements

Produce sounds but no words

Brief, unsustained visual pursuit (following an object with her eyes)

Grimacing to pain, changing facial expressions

Yawning; chewing jaw movements

Swallowing of her own spit

Nonpurposeful limb movements; arching of back

Reflex withdrawal from painful stimuli

Brief movements of head or eyes toward sound or movement without apparent localization or fixation

Startles with a loud sound

Almost all of these features consistent with the diagnosis of permanent vegetative state were present during the medical examination of Aruna Shanbaug.

Minimally Conscious State

Some patients with severe alteration in consciousness have neurologic findings that do not meet criteria for VS. These patients demonstrate some behavioral evidence of conscious awareness but remain unable to reproduce this behavior consistently. This condition is referred to here as the minimally conscious state (MCS). MCS is distinguished from VS by the partial preservation of conscious awareness. To make the diagnosis of MCS, limited but clearly discernible evidence of self or environmental awareness must be demonstrated on a reproducible or sustained basis by one or more of the following behaviors:

Following simple commands.

- *Gestural or verbal yes/no responses (regardless of accuracy).*
- *Intelligible sounds*
- *Purposeful behavior, including movements or emotional behaviors (smiling, crying) that occur in relation to relevant environmental stimuli and are not due to reflexive activity. Some examples of qualifying purposeful behavior include:*
 - *appropriate smiling or crying in response to the linguistic or visual content of emotional but not to neutral topics or stimuli*
 - *vocalizations or gestures that occur in direct response to the linguistic content of questions*
 - *reaching for objects that demonstrates a clear relationship between object location and direction of reach*
 - *touching or holding objects in a manner that accommodates the size and shape of the object*
 - *pursuit eye movement or sustained fixation that occurs in direct response to moving or salient stimuli.*



None of the above behaviours suggestive of a Minimally Conscious State were observed during the examination of Aruna Shanbaug.”

15. Before adverting to the merits of the case, we deem it appropriate to make reference to the existing legislations under which a guardian could be appointed. They are as follows: -

(a) The Guardians and Wards Act, 1890

(b) The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

(c) The Mental Health Care Act, 2017.

(d) The Rights of Persons with Disabilities Act, 2016.

16. It is trite that the ‘Guardians and Wards Act, 1890’ provides for appointment of a guardian, but only in the case of a minor. In the instant case, the son of the petitioner is an adult and is unmarried and thus, this Act has no applicability to the case in hand. Insofar as ‘The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999’ is concerned, it was enacted to create a ‘national trust’ which would ensure the welfare of persons suffering from the various conditions mentioned in the legislation. Although autism, Cerebral Palsy and Mental Retardation etc. have been defined in the aforesaid Act, a perusal of the same would reveal that this legislation also does not cover a person who is in a vegetative or comatose state.

17. Sections 52 and 53 of the erstwhile Mental Health Act, 1987 provided for the appointment of a ‘guardian’ by the District Court for taking care of a mentally ill person who was incapable of taking care of himself. Section 54 of the same Act also empowered the District Court to appoint a ‘Manager’



for the management of the property of the mentally ill person. However, these provisions are for a mentally ill person. The term has been defined in Section 2(l) of the Act to mean a person who is in need of treatment by reason of any mental disorder other than mental retardation. The Mental Health Act, 1987 was repealed and was replaced by the Mental Health Care Act, 2017. This Act has been enacted to provide for mental health care services to persons suffering from certain mental illnesses and matters connected and incidental thereto. Mental Illness has been defined in Section 2(s) of the Act which is reproduced hereunder:

“2. Definitions

(s) “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.”

A bare perusal of the same shows that this Act also has no provision concerning persons who are in a vegetative/comatose state.

18. It is, thus, manifest that there is no statutory provision which provides for the appointment of a guardian for an adult, who is in a comatose/vegetative state. Learned counsel for the parties including the Counsel for the States of Punjab, Haryana and U.T., Chandigarh are also *ad idem*, that there is no existing statute which pertains to the appointment of a guardian for an adult person who is in a vegetative/comatose state.

19. During arguments, it was submitted by counsel for the respondents that in the absence of any specific legislation in such situations, the



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appropriate statutory remedy may be to file a civil suit under Order XXXIIA of the Code of Civil Procedure, 1908 which deals with suits or proceedings relating to matters concerning 'family'. Rule 1(2)(c) of Order XXXIIA provides that the Order XXXIIA shall apply to a suit or a proceeding in relation to guardianship of the person or the custody of any minor or other member of the family, under a disability. However, the word 'disability' has not been explained and, therefore, it is difficult to interpret the same as to include within its scope, a person who is in a comatose/vegetative state.

20. It is not in dispute that the creditor here is a private bank and the petitioner instead of approaching the Civil Court has approached this Court by preferring the instant writ petition. However, the petitioner is an unfortunate mother whose adult son is in a vegetative state. Therefore, to non-suit her, merely on the ground of existence of an alternative remedy, would be harsh and highly unjust. Furthermore, it is trite that the existence of an alternative remedy by itself, cannot be an absolute bar for this Court to invoke its writ jurisdiction. Reference can be made to the judgment of the Supreme Court in the case of ***Whirlpool Corporation v Registrar of Trademarks, Mumbai AIR 1999 SC 22***. The relevant extract of the same is reproduced hereunder:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

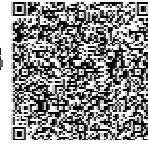
15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself



certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

21. Moreover, this Court, while exercising writ jurisdiction under Article 226 of the Constitution of India is empowered, besides issuance of writs, to issue orders and directions as may be warranted in the peculiar facts and circumstances, in the interest of justice. This Court can also mould the relief to meet the particular requirements of a case so as to further the cause of justice. Reference can be made to the judgment of the Supreme Court in the case of **Dwarka Nath vs Income-Tax Officer, Special Circle AIR 1966 SC 81**, the relevant extract of which is reproduced as under:

“This article is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. The constitution designedly used a wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To



say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels.”

22. It is pertinent to note that as the instant case concerns the issue of guardianship of a person, who is in a vegetative state and the petition has been filed by the mother, this Court is exercising its jurisdiction which is akin to the *parens patriae* jurisdiction. The Court has to secure the rights of a person, who is in a vegetative state and at the same time provide succour to his family. Intervention by this Court is warranted and necessary as the Bank is insisting on a declaration of guardian by this Court, otherwise the loan account would be inoperative, resulting in further financial hardship to the petitioner and her family members. The Supreme Court in the case of ***Shafin Jahan v. Ashokan K.M. & Ors.(2018)16 SCC 368***, has considered the scope of ‘*parens patriae*’ principle, and observed as under:

“39. Constitutional Courts in this country exercise parens patriae jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the Court can invoke the parens patriae principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.”

23. It is the sacred and bounden duty of a Constitutional Court to adapt to the exigencies of the prevailing situation, as the law is not static but keeps



evolving to meet the changing requirements of the society. Various High Courts in somewhat similar circumstances, have issued writs under article 226 of the Constitution of India for appointment of a guardian for a person in a vegetative/comatose state. Reference can be made to the judgement of the Kerala High Court in the case of **Shobha Gopalakrishnan vs. State of Kerala 2019 SCC OnLine Ker 739**, the division bench of the Bombay High Court in the case of **Rajni Hariom Sharma vs. Union of India and another, 2020 SCC OnLine Bom 880** and Delhi High Court in the case of **Vandana Tyagi vs. State/NCT, 2020 SCC OnLine Del 32**.

24. The Division Bench of the Kerala High Court had issued various guidelines in the case of **Shobha Gopalakrishnan vs. State of Kerala (supra)**. The Delhi High Court, while relying upon this judgment of Kerala High Court, had also issued certain guidelines in the case of **Vandana Tyagi vs. State/NCT (supra)**, which were to be applicable for appointment of guardians in such like cases. This court is of the considered view that in the absence of any legislative framework regarding the appointment of a guardian of a person who is in a vegetative/comatose state, certain directions are required to be issued to the States of Punjab, Haryana and U.T., Chandigarh, which are similar to the ones issued by the Delhi High Court. These directions would be in furtherance of the object of imparting justice, as well as to ameliorate the plight of family members of the persons who are in a comatose/vegetative state. These directions will be applicable till such time as a suitable legislation is enacted, as to how guardians are to be appointed *qua* persons in comatose state. The directions being issued are as follows :-



(i) A person(s) who seek(s) to be appointed as the guardian vis-à-vis an individual, who is lying in comatose state, shall in their petition to the High Court disclose the details of all tangible and intangible assets of such an individual. The details as to their location and approximate market value shall also be disclosed. In case of bank accounts, stocks, shares, and debentures and other investments are concerned, material particulars will be provided.

(ii) The High Court will have the person lying in comatose examined by a duly constituted Medical Board which would include, inter alia, a neurologist.

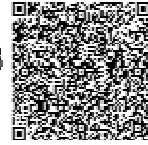
(iii) The court will also direct the SDM/Tahsildar concerned in whose jurisdiction the person lying in comatose is said to be located to carry out an enquiry to establish the veracity of the assertion and to gather material particulars concerning the person(s) who approach the court for being appointed as guardians. The enquiry will, inter alia, gather information as regards the relationship that the person(s) who wish to be appointed as guardians has/have with the person lying in comatose state. Information with regard to the financial condition of persons wanting to be appointed as guardians shall also be collected apart from other aspects which may have a material bearing in their discharging the duties of a guardian. Any conflict of interest concerning the affairs of the person lying in comatose state will be brought to fore in the report generated during the course of the enquiry.



(iv) Ordinarily only that person will be appointed as guardian who is either a parent or a sibling or a spouse or a progeny of the person lying in comatose. The person seeking appointment as a guardian in his petition to the court will, however, disclose the particulars of all legal heirs of the person lying in comatose. In the event, the person lying in comatose has neither a parent or a spouse nor any children or even any legal heirs or if he/she has such persons in his life but stands abandoned by them, subject to the permission of the court his next friend who wishes to be appointed as a guardian can approach the court, with such a request. In the alternative, the court could direct the Department of Social Welfare/Social Security to appoint a public official such as a Social Welfare Officer or a person holding equivalent rank to act as the guardian of the person lying in comatose state.

(v) Only that person shall be appointed as a guardian who is otherwise in law competent to act as a guardian.

(vi) The order directing appointment of a guardian shall specify the assets qua which the guardianship order is passed. The court will be empowered to modify the order and bring within its sweep other assets, if required, in the interest of the person lying in comatose state. In case liquid funds are not available and there is a requirement to sell the assets of the person lying in comatose state, upon the guardian approaching the court, necessary directions could be passed in that behalf.



(vii) The person appointed as a guardian will file every six (6) months (or within such period as the court may indicate in its order) a report with the Registrar General of this Court. The report shall advert to the transactions undertaken by the guardian in respect of the assets of the person lying in comatose state. Besides this, the report shall also indicate the funds, if any, received by the guardian and their utilisation for the purposes of maintaining the person lying in comatose state.

(viii) The Registrar General of this Court will cause a separate register to be maintained which will set out inter alia the details of the proceedings, the particulars of the person appointed as a guardian and orders, if any, passed after the appointment of the guardian. Measures will also be taken by the Registrar General to preserve the reports filed by the guardian from time to time.

(ix) It will be open to the court to appoint a guardian either temporarily or for a limited period, as may be deemed fit.

(x) In the event, the guardian appointed by the court misuses his/her power or misappropriates, siphons or misutilises the assets of the person lying in comatose state or fails to utilise the assets in the best interest of the person lying in comatose state, the court would have the power to remove the guardian and appoint another person in his/her place. The substituted person could also be a public officer such as a Social Welfare Officer or an officer holding an equivalent rank.



(xi) The guardian appointed by the court shall intimate his appointment to the public official/Social Welfare Officer or officer of an equivalent rank designated by the State/U.T. Both the guardian as well as the Registrar General of this Court will cause a copy of the order of guardianship being served upon such officer. Such officer shall visit the person lying in comatose at least once in every quarter. The Social Welfare Officer will generate a report of his visit. In case the Social Welfare Officer finds that the guardian appointed by the court is not acting in the best interest of the person lying in comatose state, he will move the court, at the earliest, for seeking appropriate directions.

(xii) The guardian appointed by the court will ensure that the transactions entered into by him or her comport with the relevant provisions of the law.

(xiii) In case a relative or a next friend of the person lying in comatose state finds that the guardian is not acting in the best interest of the person lying in comatose state, such person will also have the locus to approach the court for issuance of appropriate directions and/or for removal of the guardian.

(xiv) In case, the guardian wishes to move the person lying in comatose state to another state or even to another country for the purposes of securing better medical treatment for the person lying in comatose state, he/she would approach the court for necessary permission before undertaking such an exercise.



25. Copies of the orders be sent for compliance to the Chief Secretary of Punjab, Haryana and U.T., Chandigarh respectively.

26. Insofar as the instant writ is concerned, the petitioner is the mother of Rohit Kumar, who is in a vegetative state. She has filed an affidavit for her appointment as guardian. Affidavits have also been filed by the other family members of Rohit Kumar which includes his father and brother that the petitioner be appointed as a guardian. These affidavits are available on the record as Annexure P-6 to P-8.

27. This court, therefore, deems it necessary to ameliorate the plight of the petitioner and impart her complete justice and consequently will have no hesitation to direct as follows :-

- i) The petitioner is appointed as the guardian of Rohit Kumar qua the OD account No.923030054631860 belonging to Rohit Kumar who is in a vegetative/comatose state.
- ii) She would be entitled to operate the OD account.
- iii) All authorities shall accept her status as such.
- iv) The Member Secretary of the Punjab State Legal Services Authority shall monitor functioning of the petitioner as guardian of Mr. Rohit Kumar every 3 months and shall submit a report in that regard to the Punjab State Legal Services Authority, which shall be compiled with for a period of two years. If it is found necessary for extension of the period of monitoring or in case of any exigency, Member Secretary of Punjab State Legal Services Authority shall be at liberty to move the High Court.



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28. With the above directions, the writ petition is disposed of.

29. Registry to furnish a copy of this judgment to Member Secretary, Punjab State Legal Services Authority for doing the needful.

30. Before parting with the judgement, it is noted that the petitioner has already paid Rs.4 lakhs out of a sum of Rs.4,25,815/-. As per respondents, the balance sum is due along with interest and other charges. This court expects that in view of the medical condition of the borrower-Rohit Kumar, the respondent bank will consider settling the loan account sympathetically and also consider waiving of interest and other charges.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

Pronounced on: 03.07.2025.

SwarnjitS

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No