



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA,

1945

WP(C) NO. 38593 OF 2023

PETITIONER:

XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX

M.KABANI DINESH
C.ANCHALA

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY SECRETARY,
MINISTRY OF WOMEN AND CHILD DEVELOPMENT,
SASTHRI BHAVAN , NEW DELHI-, PIN - 110001
- 2 STATE OF KERALA, REP BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,
SECRETARIAT, THIRUVANANTHAPURAM-, PIN - 695001
- 3 DIRECTOR OF MEDICAL EDUCATION
DIRECTORATE OF MEDICAL EDUCATION, MEDICAL
COLLEGE P.O, MEDICAL COLLEGE, KUMARAPURAM ROAD,
CHALAKKUZHI, THIRUVANANTHAPURAM-, PIN - 695011
- 4 STATION HOUSE OFFICER OF INSPECTOR OF POLICE
PUNALOOR POLICE STATION, KOLLAM DISTRICT, PIN -
691305
- 5 GOVERNMENT MEDICAL COLLEGE
REPRESENTED BY ITS SUPERINTENDENT GOVERNMENT
MEDICAL COLLEGE, THIRUVANANTHAPURAM,, PIN -
695011
- 6 S.A.T HOSPITAL
GOVERNMENT MEDICAL COLLEGE, REPRESENTED BY ITS



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SUPERINTENDENT THIRUVANANTHAPURAM,, PIN -
695011

7 CHILD WELFARE COMMITTEE, REPRESENTED BY ITS
CHAIRMAN BEACH ROAD KOLLAM - 691001

MANU S. DSG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 01.12.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner, who is the mother of a 14 year old girl, has approached this Court seeking medical termination of pregnancy of her daughter on the ground that she was raped by the accused, who is now in custody under the provisions of the Protection of the Children from Sexual Offences Act, 2012 ('POCSO Act'); and hence being under severe mental trauma and stress.

2. I propose to be as brief as possible in this judgment, as also to be most careful because, this Court is aware that what is at stake are two lives, one that of the minor child – who is continuing with the pregnancy, and that of the foetus, which, according to the uncontested Medical Report, is at 30 weeks of gestation with a good foetal heart.

3. In fact, this matter was heard at least thrice before, and each of such time, this Court passed interim orders; which, for the purpose of clarity, would require to be extracted and read in full.

4. On 20.11.2023, which is the date on which this writ petition was first heard, the following interim order was issued:

“The learned DSGI appears for the 1st
respondent and the learned Government Pleader



appears for respondents 2 to 7.

2. Smt.Vidya Kuriakose – learned Government Pleader submitted that a Medical Board can be constituted on 22.11.2023. Smt.Kabani Dinesh, learned counsel appearing for the petitioner, acceded to the afore saying that her client's daughter will be present before the said Board.

3. In the afore circumstances, the Superintendent of 6th respondent Hospital will constitute the necessary Medical Board which will convene at 11.00 AM on 22.11.2023. The petitioner and her daughter will mark appearance before the Superintendent at 10.30 AM on that day for medial examination.

List on 23.11.2023.”

5. Thereafter, after obtaining the report of the Medical Board, this Court passed a second order on 23.11.2023, which is extracted infra:

“The Medical Board opinion has been placed on record by the learned Government Pleader – Smt.Vidya Kuriakose.

2. Suffice to say, the opinion of the Board, particularly that of the Gynecologist, is that *“uterus corresponded to 30 weeks of gestation with good fetal heart rate. Ultrasound done on 22.11.2023 shows single live intrauterine gestation corresponding to 29 weeks + 6 days with estimated fetal weight of 1.5 kg + 226 gms, AFI-15.4 cm since the patient is only 13 years and pregnancy is advanced the conventional methods of termination of pregnancy may fail and may need Cesarean section for delivery of baby”* (sic).

3. *Prima facie*, therefore, it appears to be untenable for this Court to order termination of pregnancy because, the fetus is alive and healthy, with good heartbeat.

4. Though this is not a final decision, I am of the view that all options will have to be explored before this Court decides to deal with the request of the petitioner, one way or the other.

5. The learned Government Pleader submits that the victim - child in question is housed at Children's Home, Trivandrum. The Medical Board



says that she has “ideas of guilt, low mood” and such other conditions, but that this may be because she is staying in a Children’s Home away from her family. ‘

6. No doubt, if this Court is not to accede to the request of the petitioner in this case, then the victim - child will have to be fully protected and allowed to stay in an atmosphere conducive to her pregnancy; which, by all accounts, can only at her residence, along with her parents. But before I do so, I am certain that someone with empathy must meet the child and talk to her.

7. I, therefore, direct the Secretary, District Legal Services Authority (DLSA), Trivandrum to meet the victim - child and file a report before this Court on or before 27.11.2023. I request the learned Government Pleader – Smt.Vidya Kuriakose to facilitate this, through all necessary means.

8. As far as the victim - child is concerned, *prima facie*, this Court is of the view that she should be allowed to return to her home. In such event, obviously, she should be protected particularly from the person against whom the criminal imputation has been made.

9. I, therefore, direct the learned Government Pleader to obtain instructions from the District Police Chief, Kollam as to how the victim - child can be protected and what safeguards are to be taken to ensure that she is not exposed to either the person against whom the criminal offence has been registered, or anyone else acting under him. This shall also be made available to this Court by the next posting date.

10. I clarify that neither the Secretary, DLSA or the Police Officers will inform the victim - child about any decision of this Court and will keep all such information secret.

List on 27.11.2023”

6. Noticing that the pregnancy is now at the most decisive term, and taking note of the mental health of the victim child, this Court passed a third order on 27.11.2023, to the following effect:

“Read order dated 23.11.2023.

2. As had been indicated in the afore order,



since the pregnancy is over eight months now and since the fetus has been certified to have a good heart rate, prima facie, the request of the petitioner, for termination of pregnancy, cannot be acceded to.

3. The report from the District Police Chief, Kollam Rural has been placed on record by the learned Government Pleader, along with her memo dated 27.11.2023, wherein, the following have been stated:

“2. It is submitted that, the accused was arrested on 24.10.23 and remanded into judicial custody and undergoing the custody. In this context, the presence and access of the accused person is restrained to a considerable extent. It is also obvious from his wandering nature itself that he has not too many friends. In addition to that the accused person has not in good terms with his parents and at present he has no close contact with them. If the accused person is released from custody, there is every chance of threat to the protection of the victim - child. 3. It is submitted that, if the child victim is socially safeguarded by providing with the homely atmosphere the following issues in questions are to be settled, whether the neighbors are well enough to tone with the situation, how they react to the victim - child in their vicinity etc... The living area of the victim - child is a tribal settlement colony congested with nearby settlements. They are all laymen following the customs and traditions of their clan. The victim's father got acquainted with the accused while working at Kallar Estate in Kulathupuzha Police Station limit. He is a chronic drunkard and as such he is not competent enough to looking after the child victim. Moreover, the victim - child was subjected to rape at her home itself while she was residing with her parents. In that perspective how far, the victim can be safeguarded in the home is a question. 4. It is submitted that, in addition to that the residential area of the victim - child is a remote place named Kuryottumala far from Punalur town. It is evident that the victim - child



needs special medical care and attention at this stage of the gestation. If any urgent medical care is needed to her it will be difficult to support with medical assistance due to the lack of proper transportation and distance from the Hospital. In that sense the proximity of a well facilitated hospital is also an essential element in this regard. In addition to that it would be better to consult with CWC Kollam and allow mother of the victim-child to stay with the child for taking care in the shelter if law permits. 5. It is submitted that, However, if the child victim is repatriated to her home, Police would provide the service of the Victim liaison officer. In this regard the Police Officer would be Instructed to liaison with the mother of the victim-child and collect the phone number, provide them with 24x7 Hrs service and furnish report on a daily basis to the Inspector of Police Punalur and continue with follow up action. In that regard this office already issued instruction to Inspector of Police Punalur Police station for reasonable action including the aforesaid matters."

4. No doubt, the family condition of the petitioner appears to be far from conducive to a child of 13 or 14 years. However, since she is in advanced pregnancy and the accused is in custody, I am of the view that she must be given the benefit of her mother's company forthwith.

5. In this regard, the averments in paragraph 5 afore of the statement of the District Police Chief, Kollam Rural, certainly become important.

6. Smt.M.Kabani Dinesh, appearing for the petitioner, submitted that her client's daughter also wants to return home, particularly because she feels very alone in the "Care Home". In fact, the District Police Chief has recommended, as seen above in the statement, that the mother should be allowed to stay with the child in the "Care Home". However, this is not legally possible.

7. Therefore, the only other option for this Court is to allow the victim to go back to her home along with her mother.

8. I am guided to the afore view also on account of the report that has been placed on record by the Secretary of the Thiruvananthapuram District Legal Services Authority, who has reported



that the victim child has revealed a desire to return home and reunite with her parents. It is also recorded therein that there is a hospital at Punalur which is at a distance of only ten minutes journey from her residence; while, the SAT Medical College, from the place where she presently resides, is 25 minutes away. Pertinently, the report records that the victim child has displayed a “remarkable level of maturity during the conversation” (sic); and that “she eloquently detailed her background” (sic). It also indicates that even according to the victim child, she had close acquaintance with the accused and developed a relationship with him. 9. I, therefore, direct that the child victim will be allowed to go back to her home, with a consequential direction to the District Police Chief, Kollam Rural, to assign a Victim Liaison Officer to her and provide them with all services as have been offered by him in the averments in paragraph 5 of the afore statement.

10. Needless to say, the District Police Chief will ensure that the victim child is escorted from the Care Home to her house; and that she is protected from all deleterious tendencies, including from any person who may have a connection with the accused.

List on 01.12.2023 for further consideration.”

7. Today, the learned Government Pleader – Smt.Vidya Kuriakose, submitted that all necessary measures have been taken to ensure that the child is brought back to her home, to be in the company and comfort of her parents, so that she can continue with the pregnancy and deliver the child without mental strain or stress. She added that the victim child has, in fact, been brought to her home as we speak and that every effort, as ordered by this Court in the afore extracted interim order dated 27.11.2023, will be taken to keep her safe and away from harm. She added that



respondents are willing to abide by any further directions to be issued by this Court.

8. Smt.M.Kabani Dinesh - learned counsel appearing for the petitioner, submitted that since the pregnancy was the outcome of an act of rape on her client's child, she is entitled to the protection of the Medical Termination of Pregnancy Act, 1971 (for short, 'the Act'); and therefore, reiteratingly prayed that the reliefs sought for in this writ petition be granted.

9. At first blush, the afore argument may look lustrous because the accused certainly has been charged under the 'POCSO Act' and stated to be under custody, but there is a rather unusual twist at this stage because, the records and reports available on file indicate that the victim child had not been forced. That said, no doubt, the child is still very young – just 13 to 14 years in age, and what happened to her is certainly statutory rape.

10. This Court is saying as afore only for one reason, namely that the pregnancy is now very advanced, with the Medical Board speaking with unanimity that the “uterus corresponded to 30 weeks of gestation with good foetal



heart". The foetus has, in fact, life with heart rate; and hence, termination of the pregnancy at this stage is impossible, as also untenable. The Medical Board is also unambiguously of the view, as available from the record, that termination is not possible, but that the baby can only be taken out through a Caesarean section - which is to say, that it will be born alive, with a prognosis of a good life in future.

11. Apodictically, this is not a case where the victim-child's health is a risk on account of the pregnancy; nor are there any lethal foetal abnormalities detected. The pregnancy is almost in its 9th month and the foetus is gaining weight and fat, getting closer to its eventual birth weight. Its vital organs, like the brain and lungs, are almost fully developed, preparing for life outside the womb.

12. Obviously, therefore, this Court cannot accede to the request of the petitioner; though am in full empathy with the condition she and her family is going through, particularly because the victim child is so young.

13. I am, therefore, of the firm view that this is not a case where the provisions of 'the Act' can come to the aid of the petitioner, though she and her daughter ought to be



offered every protection available in law, to ensure that the latter delivers her baby and is able to take care of her, within the parameters of the statutory and executive realm.

14. In the afore circumstances, confirming the afore extracted interim orders, I close this writ petition; however, directing the jurisdictional Child Protection Officer to visit the victim child on a regular basis and offer the family and her, every support for the purpose of continuing the pregnancy and for delivery. The said Officer will also contact the Doctors and other medical personnel for the afore purpose and should he/she encounter any issue, will be at liberty to approach this Court through a clarification petition moved with the assistance of the learned Government Pleader; in which event, the matter will be listed before this Court for appropriate orders.

15. Needless to say, the liberty of the petitioner and her daughter to approach the competent Court under the provisions of the Juvenile Justice Act, or such other applicable laws, with respect to the child to be born, is left open; and they will also be given adequate assistance and counselling in this regard by the Child Protection Officer.



I reiteratingly clarify that my observations in this case are only *qua* the petitioner and her daughter and not the accused; and that nothing contained herein can be construed to be in his favour in any manner whatsoever, in the pending penal proceedings.

Sd/- DEVAN RAMACHANDRAN

JUDGE

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APPENDIX OF WP(C) 38593/2023

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE OUT-PATIENT RECORD OF
THE 6TH RESPONDENT HOSPITAL DTD
02.11.2023.

Exhibit P2 TRUE COPY OF THE FIR IN CRIME
NO.1889/2023 DTD 22.10.2023 OF PUNALUR
POLICE STATION, KOLLAM.

Exhibit P3 TRUE COPY OF THE JUDGMENT IN WPC
7503/2022 DTD.10.3.2022 OF THIS HON'BLE
COURT.