2025:CGHC:57073

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 6057 of 2025

1. A (Particulars Are Being Mentioned In The Closed Envelop Attached Herewith)

... Petitioner

versus

1. State of Chhattisgarh Through Secretary, Ministry Of Public Health And Welfare, Mahanadi Bhawan, Naya Raipur, District-Raipur (Chhattisgarh)
2. Chairman District Medical Board, Bilaspur District Bilaspur (CG)
3. The Chief Medical Health Officer (Cmho) Bilaspur, District-Bilaspur, Chhattisgarh.
4. Station House Officer Police Station Civil Lines, Bilaspur District- Bilaspur, Chhattisgarh.

... Respondents)

For Petitioner	:	Mr. Aman Tamboli, Advocate
For Respondents	:	Ms. Upasana Mehta, Govt. Advocate

SB: Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

24/11/2025

1. A minor victim of forcible sexual intercourse/rape by accused in Crime No.1290/2025 registered at Police Station Civil Lines Bilaspur, has filed this writ petition seeking following reliefs:-

"10.1. That, this Hon'ble Court may kindly be pleased to call for the entire records from the respondents for its kind perusal.

10.2. That, this Hon'ble Court be pleased to allow the petitioner for medical termination of her pregnancy.

10.3. That, this Hon'ble Court be pleased to direct the respondents to make all necessary arrangements to facilitate the petitioner to terminate her pregnancy and to take all necessary steps required in this regard under the supervision of medical experts.

10.4. That, this Hon'ble Court be further pleased to direct the respondents to preserve the DNA sample of the fetus for further reference regarding FIR Annexure P-1.

10.5. That this Hon'ble Court be further pleased to pass such other orders as this it may deem fit under the facts and circumstances of the case."

2. This writ petition came up for hearing on 18.11.2024 and on that date, this Court directed respondent No.3 to arrange medical examination of petitioner by a team of experts including a Gynecologist 3 and to submit report on the health of petitioner and also whether termination of pregnancy can be carried out on petitioner.

3. Pursuant to the said order, the petitioner was examined by three medical practitioners of District Hospital Bilaspur and medical report of petitioner is placed on record along with covering memo dated 24.11.2025. The doctors, who medically examined petitioner, have opined that as gestation age is 21 weeks 1 day, therefore, medical termination of pregnancy can be performed according to the Medical Termination of Pregnancy Act, 2021.

4. I have heard learned counsel for the parties and perused the documents available in record.

5. To deal with the prayer made in the writ petition, it would be necessary to refer to Section 3 of the Medical Termination of Pregnancy Act, 1971, as amended upto date, which is extracted below:-

> 3. When pregnancies may be terminated by registered medical practitioners.--(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under the Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.
> (2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty four weeks, in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are of the opinion, formed in good faith, that,-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental heath; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.- Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

> (3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.
>
> (4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a [mentally ill person], shall be terminated except with the consent in writing of her guardian.
>
> (b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

6. The above quoted provision permits termination of pregnancy by a registered medical practitioner with regard to circumstances, formed in good faith, specified in sub-clauses (i) & (ii) of sub-section (2) of Section 3 of the Act of 1971 and when the length of pregnancy does not excess 24 weeks.. Likewise, Explanation-I to sub-section (2) of Section 3 also provides that in no uncertain terms that where the pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. The termination of pregnancy under the provisions of the Act of 1971 is not the rule, but it is only an exception.

7. Section 5 of the MTP Act provides for the situation when Sections 3 & 4 would have no application. According to this Section, the provisions of Section 4 and so much of the provisions of sub-section (2) of Section 3, relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant. Thus, where the life of pregnant woman is at risk, termination of pregnancy would be permissible despite the provision contained in sub-section (2) of Section 3 of the MTP Act.

8. In the case of **Suchita Srivastava and Another v Chandigarh Administration,** reported in **(2009) 9 SCC 1,** the Hon'ble Supreme Court has laid down the guidelines based on the principle of “best interests” theory and held that the Court is required to ascertain the course of action which would serve the best interests of the person in question. Relevant portion of the said decision is quoted below for ready reference:-

> "36. Courts in other common law jurisdictions have developed two distinct standards while exercising "parens patriae" jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the

"best interests" test and the "substituted judgment" test.

37. As evident from its literal description, the "best interests" test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights."

9. In case of **X v. Union of India and others**, reported in **(2016) 14 SCC 382**, the Hon'ble Supreme Court has held that in case of grave danger to physical and mental health, termination of pregnancy of a pregnant woman (an alleged rape victim), is permissible, and observed as under:-

> “13. Having perused the medical report (relevant extracts whereof have been reproduced herein above), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of

> the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy."

10. In case of **Hallo Bi @ Halima v. State of MP & ors**, reported in **(2017) 3 SCC 462**, the High Court of Madhya Pradesh has held that a victim of violent rape/forced sex cannot be compelled to give birth to a child of rapist. Similar proposition has been laid down by Hon'ble Supreme Court in the matter of **X and Others v Union of India and Others,** reported in **(2017) 5 SCC 458** and **Meera Santosh Pal and Others v Union of India and Others,** reported in **(2017) 3 SCC 462**.

11. In the case at hand, there is no dispute that petitioner is victim of forcible sexual intercourse/rape. She is desirous of terminating pregnancy as she does not want to give birth to the child of a rapist. It is her personal choice to terminate pregnancy which the Court must respect as it is a facet of her personal liberty as has been held by the Supreme Court in case of **Suchita Srivastava (supra)**. Continuation of pregnancy can gravely endanger her physical and mental health. Report of medical practitioners of District Hospital, Bilaspur, who medically examined the petitioner, would show that she is physically and mentally fit to undergo termination of pregnancy, which is of 21 weeks & 01 days i.e. within the outer limit of 24 weeks prescribed in Section 3 of the Act of 1971 for termination of pregnancy.

12. In the above circumstances, this Court is of the considered view that not permitting rape victim in the present case to go in for medical termination of unwanted pregnancy would amount to compelling her to continue to bear such pregnancy for full duration and deliver the child, which would be violative of her bodily integrity, it would not only aggravate her mental trauma but would also have devastating effect on her overall health including on psychological and mental aspects. This is violative of her personal liberty, to borrow the words of the Supreme Court in **Suchita Srivastava (supra),** because "a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India". In the peculiar facts of the case, her personal integrity has to be respected. It may even be more dangerous to the unborn child too because the society would also not take petitioner or her child properly and respectfully .

13. For the foregoing reasons, this writ petition seeking permission for medical termination of pregnancy of petitioner, is allowed. She is permitted to approach respondent No.3 again where respondent No.3 shall ensure that petitioner is subjected to termination of her pregnancy after completing all other requisite formalities required for the same. Respondent No.3 is further directed to issue instructions for the District

Hospital authorities where she was earlier examined permitting her to be subjected to termination of her pregnancy under the supervision of two registered medical practitioners including Specialist Doctors in the field i.e. Department of Gynaecology. The Superintendent of the District Hospital Bilaspur is also directed to ensure that the DNA sample of the foetus shall also be taken and preserved for further evidence of criminal case.

14. Let this exercise be carried out without any further delay and the petitioner is directed to approach before the respondent No.3 on **28.11.2023** for aforesaid purpose. Respondent No.3 shall further take all necessary steps. The Government Counsel is also directed to intimate respondent No.3 as regards the next course of action that has to be taken.

15. The report submitted by the State counsel so far as the health condition of petitioner is taken on record.

16. Certified copy as per rules.

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-