

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**THURSDAY, THE 10<sup>TH</sup> DAY OF MARCH 2022 / 19TH PHALGUNA, 1943**

**WP(C) NO. 7503 OF 2022**

**PETITIONER/S:**

YYYY

X

BY ADVS.

M.KABANI DINESH

C.ANCHALA

**RESPONDENT/S:**

- 1 UNION OF INDIA, REPRESENTED BY SECRETARY,  
MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SASTHRI  
BHAVAN, NEW DELHI - 110 001.
- 2 STATE OF KERALA, REPRESENTED BY SECRETARY TO  
GOVERNMENT, DEPARTMENT OF WOMEN AND CHILD  
DEVELOPMENT, SECRETARIAT, THIRUVANANTHAPURAM -  
695 001.
- 3 DIRECTOR OF MEDICAL EDUCATION  
DIRECTORATE OF MEDICAL EDUCATION, MEDICAL  
COLLEGE P. O., MEDICAL COLLEGE, KUMARAPURAM  
ROAD, CHALAKKUZHI, THIRUVANANTHAPURAM - 695 011.
- 4 STATION HOUSE OFFICER OF INSPECTOR OF POLICE  
KANNANELLURE POLICE STATION, KOLLAM DISTRICT.
- 5 SAT HOSPITAL, REPRESENTED BY ITS SUPERINTENDENT,  
GOVERNMENT MEDICAL COLLEGE, KUMARAPURAM P. O.,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695 011.
- 6 CHILD WELFARE COMMITTEE, KOLLAM  
REPRESENTED BY ITS CHAIRPERSON, BEACH ROAD,  
PALLITHOTTAM, THAMARAKULAM, KOLLAM - 691001.

BY ADV ADVOCATE GENERAL OFFICE KERALA

**OTHER PRESENT:**

SMT.VIDYA KURIAKOSE, GP, SRI.S.MANU, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 10.03.2022, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J.**

W.P.(C) No.7503 of 2022

Dated this the 10<sup>th</sup> day of March, 2022

**JUDGMENT**

The petitioner is the mother of a ten year old minor girl, who suffered sexual abuse from her own father. The child is now pregnant. The writ petition is filed with following prayers:

- “I. Issue a Writ of Mandamus or any other writ, order or direction permitting the Petitioner's minor daughter to undergo Medical termination of her pregnancy under the provision of the Medical Termination of Pregnancy Act 1971 and to issue consequential direction to the 5th respondent to conduct such termination procedure in accordance with the law forthwith.*
- II. To grant such other further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.” (Sic)*

2. When this writ petition came up for consideration, this Court passed an order on 07.03.2022, which is extracted hereunder:

*“Admit.*

*ASGI takes notice for R1. Government Pleader takes notice for R2 to R6.*

*There will be an interim order directing the 5<sup>th</sup> respondent to constitute a Medical Board and examine the stage of pregnancy of the petitioner’s minor daughter on 08.03.2022 or 09.03.2022 and file a report forthwith.*

*Post on 10.03.2022”*

3. Based on the above direction, the Medical Board is constituted and the Medical Board submitted a report, which is extracted hereunder:

*“Since the pregnancy is around 31 weeks and breech presentation, operative delivery is needed with the associated anaesthesia and surgical risks.*

*At 30 weeks 6 days, expected weight of 1.557 Kg – there is 80% chance of the baby surviving. There is risk of Neonatal morbidities and need for NICU care and also adverse neurodevelopmental outcome for the newborn baby. At 30 weeks 6 days we are ethically and medicolegally liable to resuscitate and give care to the newborn baby.*

*Psychiatric consultation and opinion of this case is pending.”*

4. From the medical report, it is clear that the pregnancy is around 31 weeks and breech presentation, operative delivery is needed with the associated anaesthesia and surgical risks. At 30 weeks 6 days, with expected weight of 1.557 Kg – there is 80% chance of the baby surviving. It is also stated in the report that, there is risk of Neonatal morbidities and need for NICU care and also adverse neurodevelopmental outcome for the newborn baby. Medical Board report that, at 30 weeks 6 days they are ethically and medicolegally liable to resuscitate and give care to the newborn baby.

5. It is an unfortunate case in which a ten year old rape victim is pregnant and the medical board says that 80% chance of the newborn baby surviving. The alleged culprit is her own father. If the allegation is correct, I am ashamed of and of

course, the entire society should bow their head for the same reason. I am sure that long arm of our legal system will punish him in a manner known to law. Since the victim child is only aged ten years, there is a chance for medical complication to her health. Considering the entire facts and circumstances of the case, according to me, this is a case in which this Court should invoke the jurisdiction keeping in mind the Almighty.

6. In a similar situation, the Bombay High Court considered W.P.(C) No.10835 & 9748 of 2018 on 03.04.2019 in **XYZ v. Union of India and Others [MANU/MH/0565/2019]** In that case, certain directions are issued regarding the welfare of the newborn child, if the newborn is surviving. It will be better to extract clause (h) & (i) in Paragraph 138 of the judgment.

*“(h) we hold that where, this Court, in exercise of its powers under Article 226 of the Constitution of*

*India has permitted medical termination of pregnancy and the child is born alive, then, the registered medical practitioner and the hospital/clinic concerned will have to assume full responsibility to ensure that such child is offered best medical treatment available in the circumstances, in order that it develops into healthy child;*

*(i) We further hold that where, this Court, in exercise of its powers under Article 226 of the Constitution of India has permitted medical termination of pregnancy and the child is born alive, if the parents of such child are not willing to or are not in a position to assume the responsibility for such child, then, the State and its agencies will have to assume full responsibility for such child and offer such child medical support and facilities, as may be reasonably feasible, adhering always to the principle of best interests of such child as well as the Statutory provisions in the Juvenile Justice Act.”*

7. I think a similar order can be passed in this case also.

Therefore, this writ petition is disposed of in the following manner:

- (i) The 5<sup>th</sup> respondent is permitted to do the needful in accordance to the Medical Termination of Pregnancy Act. It should be done within one week from the date of receipt of a copy of this judgment. If the 5<sup>th</sup> respondent needs any expert medical assistance from any other specialists, the 5<sup>th</sup> respondent can request the Director of Health Services, and the Director of Health Services will do the needful forthwith.
- (ii) If the baby born alive, the 5<sup>th</sup> respondent will do the needful in accordance to law. It is declared that if the newborn is alive, then the 5<sup>th</sup> respondent and the hospital concerned will have to assume full responsibility to ensure that such child is offered best medical treatment available in the circumstances in order that it develops into a healthy child.
- (iii) It is also declared that if the parents of the child are not willing to or not in a position to assume the responsibility of the child, then the State and its agency will have to assume full responsibility of

such child and offer such child medical support and facilities as may be reasonably feasible, adhering always to the principle of best interests of such child as well as the statutory provisions in the Juvenile Justice Act.

Issue a copy of this judgment today itself.

sd/-

**P.V.KUNHIKRISHNAN**  
**JUDGE**

das



**APPENDIX OF WP(C) 7503/2022**

PETITIONER EXHIBITS

- Exhibit P1                    FIR IN CRIME NO.0712/2022 DATED  
20.02.2022 OF KANNANELLURE POLICE  
STATION UNDER SECTION 376 AB, 376 (2)  
(F), 376 (2) (N), 354-B, 354 A(1)(I)  
OF IPC R/W SECTION 75 OF THE JUVENILE  
JUSTICE (CARE AND PROTECTION OF  
CHILDREN) ACT, 2015 AND SECTIONS 4  
(2), 3 (A), 6(1), 5 J (II), 5M, 5N, 51  
OF THE PROTECTION OF THE CHILDREN FROM  
SEXUAL OFFENCES ACT 2012.
- Exhibit P2                    A TRUE COPY OF THE SCAN REPORT DATED  
20.02.2022.