

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No.2823 OF 2022

‘A’ : PETITIONER

...VERSUS...

1. State of Maharashtra,
Through the Principal Secretary,
Public Health Services,
Mantralaya, Mumbai-23.

2. District General Hospital,
Amravati,
through its Medical officer,
Mother Teresa Road, Khaparde,
Bagischa, Malted, Amravati.

: RESPONDENTS

Ms. S.H. Bhatia, Advocate for Petitioner.

Ms. N.P. Mehta, Asstt. Government Pleader for Respondent/State.

**CORAM : A.S.Chandurkar And
Urmila Joshi-Phalke, JJ.**

DATE : 27th June, 2022.

ORAL JUDGMENT : (Per : Urmila Joshi-Phalke, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of both the parties.

2. The petitioner contends that she is child in conflict with law and lodged with the Government Girls Observation Home, Amravati. She is in custody of Observation Home, Amravati as she had committed offence under Section 302 of the Indian Penal Code and crime is registered against her vide Crime No.141/2022. Crime No.101/2021 was also registered as petitioner was not traceable on the basis of report lodged by her mother under Section 363 of the Indian Penal Code. During the investigation it revealed to the Investigating Officer that petitioner is pregnant and, therefore, offence was registered under Section 376 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012. The petitioner, who is in custody of Observation Home as she had committed offence under Section 302 of the Indian Penal Code. She is also victim of sexual assault and, therefore, another crime was registered bearing No.101/2021 on the basis of report lodged by her mother.
3. It is the contention of the petitioner that she is from economically weak section and, therefore, she is unable

to up-bring the child. Due to said incident she had suffered and is suffering because of sexual abuse. She has undergone the agony and she will go through the same in future also. Therefore, she seeks permission from this Court directing the respondent No.2 to terminate her pregnancy which is of 12 weeks. She further submitted that she is also facing financial hardship, therefore, permission may kindly be granted to her for terminating her pregnancy under the prevailing bona fide facts and circumstances. The pregnancy of the petitioner is unwanted and the same violate her personal liberty.

4. By the order dated 07.06.2022 the report of the Medical Board was called for. The report of the Medical Board dated 14.06.2022 is tendered across the bar and is taken on record. The Medical Board opined that the petitioner had pregnancy of 16 weeks and has consented for the pregnancy to be terminated.

5. Heard learned counsel for the petitioner.

6. Learned counsel for the petitioner submitted that in view of sexual abuse, petitioner is carrying the pregnancy.

She hails from economically weak section. She undergone the trauma and in future also she would have to suffer mental agony. The pregnancy is unwanted. The petitioner is also facing financial hardship. In the circumstances, permission be kindly granted to terminate the pregnancy.

7. In view of the provisions of Section 3(2)(b)(i) of the Medical Termination of Pregnancy Act, 1971 a pregnancy may be terminated if continuance of the same would involve a risk of grave injury to the physical or mental health of the pregnant woman. This provision has to be read along with sub-section (3) of Section 3 which denotes that in determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2) may be taken into account while considering such type of applications. These provisions are to be read along with sub-section (1) of Section 5 of the said Act to make the provisions of the Act meaningful and reflective of the ground realities. The Medical Termination of Pregnancy Act, 1971 has been enacted to provide for the termination of certain

pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. Regarding the termination of pregnancy it is to be seen whether there is a danger to the life or risk to the physical or mental health of a woman. Section 3 of the Act deals with the situation when pregnancy may be terminated by the registered medical practitioners. For better understanding we reproduce Section 3 hereunder :

“Sec.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 that 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 twelve weeks, if such medical practitioner is, or

(b) Where the length of the pregnancy exceeds twelve weeks, 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 health; 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 a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of 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), pregnancy shall be terminated except with the consent of the pregnant woman.”

8. Section 4 deals with place where pregnancy may be terminated. Section 5 of the Act states about the situation when Sections 3 and 4 would not apply.

9. It is submitted by the learned counsel for the petitioner that the financial condition of the petitioner is weak. Said pregnancy is unwanted. She has undergone physical as well as mental trauma and, therefore, she be permitted to terminate her pregnancy. Admittedly, the petitioner is staying in a custody of Observation Home. She is also charged for the offence punishable under Section 302. She is also victim of sexual abuse. On the basis of the report lodged by the mother of the petitioner offence was registered as the petitioner was subjected for the sexual assault. She is

minor. Thus, the surrounding circumstances shows that she has undergone mental trauma.

10. The Hon'ble Apex Court in catena of decisions like in the case of **Suchita Srivastava vs. State**, reported in (2009) 9 SCC 1 expressed the view that the right of a woman to have reproductive choice is an insegrable part of her personal liberty as envisaged under Article 21 of the Constitution of India. She has a sacrosanct right to her bodily integrity. In the case of **X vs. Union of India**, reported in (2016)14 SCC 382 observed that the said provision deals with termination of pregnancies of different durations and the procedure contemplated thereof. It is observed by the Hon'ble Apex Court that termination of pregnancy which is necessary to save the life of the pregnant woman is permissible. It is further observed by the Hon'ble Supreme Court by considering the report of the Medical Board that the risk of the petitioner continuation of her pregnancy of 24 weeks could gravely endanger her physical and mental health. In the case of **Sarmishtha Chakraborty vs. Union of India**, reported in

2017(6) ALL MR 473 (S.C.). Hon'ble Supreme Court again confronted with the prayer made by the petitioners, husband and wife, for constituting medical board to assess the pregnancy of the wife and directing termination of the pregnancy. In that case Supreme Court considered the report of the medical board and observed that the petitioner wife would suffer mental injury if the pregnancy was continued and there would be multiple problems if the child was born alive. Again, this issue was considered by the Hon'ble Supreme Court in the case of **A vs. Union of India**, reported in **(2018) 4 SCC 75** wherein also Hon'ble Supreme Court after evaluating the report of the medical board permitted the petitioner to undergo medical termination of her pregnancy.

11. This Court has also recently in the case of **MS. X vs. State of Maharashtra**, and another reported in **2022(3) Mh.L.J. 67** dealt with the issue and observed that if the pregnancy exists for more than 24 weeks and in the opinion of the Registered Medical Practitioners formed in good faith, continuation of such pregnancy would involve a risk to the life

of the pregnant woman or grave injury to her physical or mental health, the pregnancy can be medically terminated. It is further observed by this Court that it is also clear that where any pregnancy is alleged by any pregnant woman to have been caused by rape, the anguish caused by such pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman.

12. In the present case also petitioner is unmarried. She is not only a victim of sexual abuse. She is lodged in the Observation Home. Her financial condition is also weak. She has already undergone the trauma due to the sexual assault on her. She is also suffering mentally as she is also charged for the offence punishable under Section 302 of the Indian Penal Code. She contended that said pregnancy is unwanted. Admittedly, she cannot be forced to give birth to a child. As observed by the Hon'ble Supreme Court that it is the right of woman to have reproductive choice. She has a choice to give birth to the child or not.

13. In the above circumstances the Medical Board opined that the pregnancy could be terminated if petitioner is a minor girl. She is subjected for sexual assault. It is difficult for her to carry said pregnancy under above circumstances. She also pleaded that it is unwanted pregnancy. In such circumstances if the child is born she would not able to receive financial and emotional support from her family members. It would be difficult for her to raise the child as she does not have any source of income. In such circumstances and taking overall view of the matter, we are of the view that declining such permission to the petitioner would tantamount to compelling her to continue with her pregnancy which in the circumstances will not only be a burden on her, but it would also cause grave injury to her mental health.

14. In the above circumstances, we grant liberty to the petitioner to undergo medical termination of her pregnancy. Hence, we proceed to pass following order :

ORDER

(i) Writ Petition is hereby allowed.

(ii) We direct the respondent No.2 to terminate unwanted pregnancy of 16 weeks of the petitioner immediately.

(iii) The Superintendent, Government Girls Observation Home, Akola shall escort the petitioner to the Medical Board to enable her to appear before the Dean, Government Medical Board and College, Akola on 1.7.2022.

(iv) The fees of the counsel appointed to represent the petitioner shall be in accordance with the rules.

(v) An authenticated copy be supplied to the learned counsel for the petitioner as well as the respondents for taking necessary steps.

15. Rule is made absolute in the above terms.

(Urmila Joshi-Phalke, J.)

(A.S.Chandurkar, J.)

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