

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 3179/2024

Victim

----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Superintendent Of Police, District Dausa, Dausa.
3. Station House Officer, Police Station- Baijupara, District Dausa, Dausa.
4. Additional Chief Secretary, Medical Health And Family Welfare Department, Secretariat, Jaipur.
5. Principle, Sms, Medical Collage, Gangawal Park, Jln Marg, Jaipur.

----Respondents

For Petitioner(s) : Mr. Satish Kumar

For Respondent(s) : Mr. Chandragupt Chopra, PP

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

27/05/2024

1. Instant criminal misc. petition u/s. 482 Cr.PC has been preferred by a rape victim, who is a major girl of about 20 years, seeking permission to get terminate her unwarranted pregnancy, which according to report of the Medical Board has attained age of 28 weeks.

2. At the outset, it is noteworthy that this Court vide order dated 23rd May, 2024, issued directions for medical check-up of petitioner through a Medical Board of three experts at Mahila Chikatsalaya, Sanganeri Gate, Jaipur. In pursuance thereof, report of Medical Board dated 24.05.2024, has been placed on record by



the learned Public Prosecutor, wherein the Medical Board has opined that:

"अतः मेडिकल बोर्ड सर्वसम्मति से इस निष्कर्ष पर पहुंचा है की पीड़िता की गर्भ की अवधि MTP ACT AMENDMENT 2021 की समय सीमा से अधिक है। अतः माननीय उच्च न्यायालय यदि निर्देशित करता है तो माननीय न्यायालय के निर्देशानुसार high risk consent के साथ पीड़िता का गर्भपात किया जा सकता है।"

3. Learned counsel appearing for petitioner, contends that petitioner is a rape victim, but she is a major girl, and is agreeable to give her consent to undergo a high risk, for getting terminated her pregnancy, since it would be grave injurious to her mental health, if pregnancy is not allowed to be terminated and she is forced to give birth to an unwanted child. In this context, learned counsel drew attention of this Court to relevant provision of Sub-section (2) of Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter for short "the Act of 1971"), wherein vide amendment act No.8/2021, the pregnancy existing length of twenty weeks is permitted to be terminated, in case where 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. Learned counsel emphasized on Explanation No.2, to contend that if a rape victim is allowed to deliver an unwanted child, the anguish caused to her, shall be presumed to constitute grave injury to the mental health of the pregnant woman. For ready reference, relevant portion of the provision, is being extracted hereunder:--

“3. When Pregnancies may be terminated by registered medical practitioners.-

.....

(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 but does not exceed twenty weeks, if not less than two registered medical practitioners are.

Of 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 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.

(Emphasis Supplied)

4. In support, learned counsel for petitioner has referred a judgment of the High Court of Judicature at Madras dated **15.07.2022** passed in **W.P No.18043/2022: Petitioner Vs. The State of Tamil Nadu**, wherein the pregnancy was reported to be 28 weeks + 3 days, to a minor rape victim, but was allowed to be terminated. The High Court of Madras in its order dated 15.07.2022 has placed reliance on judgments of the Hon'ble Supreme Court in case of **A Vs. Union of India [(2018) 4 SCC**



75], permitting termination in a case where the gestational age was 25-26 weeks; in case of **Murugan Nayakkar Vs. Union of India [(2017) SCC Online SC 1092]**, allowing termination of pregnancy in the case of 13 years old child; and in case of **Sarmishtha Chakraborty Vs. Union of India [(2018) 13 SCC 339]**, permitting termination of pregnancy when the gestational age was 26 weeks, in view of the recommendations of the medical board.

5. In addition to above, learned counsel for petitioner has also relied upon a judgment of the Apex Court in case of **XYZ Vs. The State of Gujarat [(2023) LiveLaw (SC) 680]**, wherein a foetus having length of almost 27 weeks of a girl of rape victim, was allowed to be terminated.

6. Learned Public Prosecutor states that in view of report of the Medical Board, available on record, if petitioner, who is a major girl, is ready and willing to give her consent to face the high risk of her life, for the purpose of termination of her pregnancy, this Court may pass appropriate order in the interest of petitioner-victim.

7. *Prima facie*, from the record it appears that petitioner had approached before the sessions Judge, for granting permission to terminate her pregnancy and at that point of time, length of her pregnancy was within permissible limits of the statutory provisions of the Act of 1971, as extracted hereinabove. Learned sessions Judge vide order dated 15.05.2024 declined to grant permission for termination of pregnancy only for want of jurisdiction. Therefore, it may not be discerned that there is any delay on the part of petitioner-victim, seeking termination of her pregnancy.

8. According to the report of the Medical Board dated 24.05.2024, the Medical Board has opined to terminate the pregnancy of petitioner under high risk with consent of the petitioner and subject to granting permission by this Court. Petitioner is a major girl and a rape victim, who is agreeable to give her consent to undergo operation to get terminated her unwanted pregnancy under the high risk of her life. As per Explanation No.2 of Sub-section (2) of Section 3 of the Act of 1971, as extracted hereinabove, grave injury to the mental health of petitioner may be presumed and cannot be brushed aside, if her unwanted pregnancy is not allowed to be terminated and is forced to give birth to the child, to face the agony in her entire life, including to maintain the child as well as other ancillary and connected issues.

9. On the strength of judgments, of which reference have been given hereinabove, this Court is of the opinion that permission to terminate the pregnancy of a rape victim can be granted beyond the prescribed provisions of the Act of 1971, amended act of 2021, considering the peculiar facts and circumstances of individual case. In the case at hand, petitioner is a major girl and rape victim, who does not want to carry her unwanted pregnancy, therefore, in view of Explanation No.2 of Sub-section (2) of Section 3 of the Act of 1971, non-granting permission for termination of pregnancy of petitioner would certainly may render grave injury to her mental health and would amount to forcing her with responsibility to take care of a child for lifelong, contrary to her wish. It is true that as per report of the Medical Board, the length of gestational period of foetus of petitioner, has reached to

28 weeks, but the fact may not be brushed aside that petitioner approached before the Court, though the sessions Court, within time. Nevertheless, as per the judicial precedents expounded in various judgments of the Apex Court and other High Courts, as referred hereinabove, the termination of a foetus has been allowed even in case, the foetus has crossed age of 28 weeks. The Medical Board has also opined for performing the surgery to terminate the pregnancy, subject to high risk consent, for which the petitioner is agreeable. There is no case law contrary to above, has been brought to the notice of this Court. Therefore, the special circumstances of the present case, warrant to grant permission for termination of pregnancy for the better future and life of the petitioner.

10. In such peculiar facts and circumstances, this Court deems it just and proper to exercise its inherent powers u/s. 482 Cr.PC, to grant permission to the petitioner for termination of her pregnancy. Accordingly, this Court directs the Superintendent of Mahila Chikitsalaya, Sangneri Gate, Jaipur to make arrangements for termination of the pregnancy of the petitioner, subject to extending free consent of high risk by the petitioner to undergo such termination. Petitioner is directed to appear before the Medical Board today itself or by tomorrow, for the purpose of termination of her pregnancy and the exercise shall be carried out forthwith by the respondents-State Authorities, as per directions noted hereinabove.

11. A copy of this Order be sent to the Rajasthan Legal Services Authority, Jaipur as well as to the District Legal Services Authority, Dausa, to provide all requisite financial and other required



assistance to the petitioner, to ensure performance to undergo the operation for termination of her pregnancy. The State Authorities are also directed to render all required assistance to the petitioner as well as to her parents, during the period of her stay at the hospital for the aforesaid purpose.

12. It is hereby directed that in case the foetus is found alive, the hospital shall provide all necessary medical assistance including incubation facility, either in the same hospital or other hospital wheresoever the facility of incubation available, in order to ensure that the foetus may survive. In case, foetus is not found alive, the appropriate steps be taken to preserve evidence for the subsequent DNA test report by drawing tissues from the foetus.

13. With the aforesaid directions, the present criminal misc. petition stands disposed of.

14. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL),J