

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 2665 of 2023**

- A (Details In Closed Envelop) Nil

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station- Katghora, District : Korba, Chhattisgarh
2. Chief Medical Officer, District Hospital, Korba, District : Korba, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Ravindra Kumar Agrawal, Advocate with Mr. Vivek Shrivastava, Advocate
For State	:	Mr. Rahul Jha, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/06/2023**

1. This Court vide previous order dated 16.06.2023 had asked the respondent No.2-the Chief Medical Officer to submit a report so far as the health condition of the petitioner is concerned.
2. State counsel has submitted a report of the Chief Medical Officer, where the respondent No.2 has given a report that the termination of pregnancy can be carried out on petitioner.
3. The facts in brief are that the petitioner - a minor girl was subjected to rape by accused Alaukik Prasad Kanwar. The offence of rape has been registered against accused Alaukik Prasad Kanwar under Sections 376, 450 & 506 of IPC and also under Section 4 of the POCSO Act at Police Station Katghora, District Korba (CG). The Petitioner, as a result of rape committed on her, is said to have got pregnant. When the Petitioner approached the Medical Practitioner for terminating of her pregnancy, the Medical Practitioner orally refused to terminate her pregnancy on account of the criminal case that has been lodged by her against the accused person.
4. The petitioner has relied upon an order passed by this Court in WPC No. 2869/2019, decided on 27.08.2019 and WPC No. 3674/2019, decided on 23.10.2019 in support of her contentions.

5. The State counsel on the previous date of hearing was directed to get the medical opinion so far as the health condition of the petitioner is concerned and the respondent No.2 has submitted their report showing that the petitioner can be permitted for termination of pregnancy.
6. It would be relevant at this juncture to refer to paragraph Nos. 6 to 9 of the judgment passed in WPC No. 2869/2019 on 27.08.2019, which are as under:-

“6. The Supreme Court in the case of Meera Santosh Pal & others Versus Union of India and others {(2017) 3 SCC 462} has reiterated the view taken in the case of Suchita Srivastava Vs. Chandigarh Admn {(2009) 9 SCC 1} and has observed thus in para 9, which is reproduced hereunder:-

“9. In Suchita Srivastava v. Chandigarh Admn {(2009) 9 SCC 1} a Bench of three Judges held “a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution”. The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court observed as follows :-

“22. There is no doubt that 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. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman’s right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman’s entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.”

7. Reading of section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act of 1971') makes it clear that where length of pregnancy does not exceed 20 weeks and not less than two registered medical practitioners have formed an opinion in good faith that the continuance of pregnancy would involve a risk to the life of pregnant woman or grave

injury to her physical or mental health, the pregnancy can be terminated by a registered medical practitioner. This act of medical practitioner, if aforesaid conditions are satisfied, will not attract the penal provisions mentioned in Indian Penal Code. In other words, such registered medical practitioner shall not be guilty of any offence under the IPC or under any other law for the time being in force if conditions mentioned in Section 3 or Section 5 of the Act are satisfied.

8. Explanation 1 of the Act of 1971 purports that when 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. Sub section 4(a) of section 3 further contemplates that no pregnancy of a woman, who has not attained the age of eighteen years, for termination of the pregnancy consent has to be obtained in writing from her guardian.

9. The instant petition has been preferred by the mother of the victim being her natural guardian and the victim has also been made petitioner No.1 and the report which is called from the team of the two medical practitioner of Civil Surgeon, Main Hospital, Mahasamund shows that the patient is fit to undergo termination of pregnancy and the pregnancy is of 17 weeks 01 day.”

7. Based on the aforesaid findings, the Coordinate Bench of this Court had allowed the writ petition and permitted the petitioner for terminating the pregnancy.
8. Bare perusal of the facts of the present case would show that the said judgment of this Court in WPC No. 2869/2019 is on similar footing and the condition of the petitioner therein and the petitioner herein also are almost similar.
9. It is by now a well settled principle that compelling a woman to continue with an unwanted pregnancy would violate her fundamental rights. The same has been the recent trend of many High Courts. The right to reproductive autonomy and privacy are considered fundamental rights in India which are protected under Article 21 of the Constitution which guarantees the right to life and personal liberty. In the recent past, the Indian courts have recognized women to have the right to make decisions about their own bodies including the choice to terminate unwanted pregnancy. The victim of rape who has got conceived because of the act on the part of accused and yet in another situation where the victim was abused on the false pretext of marriage and subsequently has been ditched by the

accused, would have to undergo tremendous physical and mental trauma during the entire period of pregnancy. The physical and mental trauma would further get enhanced if she becomes a mother. The mental trauma would also be there on the child to be born. One cannot forget the social stigma that would be attached with the victim firstly on becoming pregnant particularly when she is unmarried and secondly after giving birth to the child that social stigma would also be there upon the child born out of such an act all through the life. Therefore, for the overall well being of the petitioner both on physical and mental side and also considering the aspect from the society's point of view and the potential harm and distress that could cause if pregnancy is allowed to be continued and she delivers a child and becomes an unmarried mother, this Court is inclined to allow the present writ petition permitting the petitioner to undergo with the termination of her pregnancy.

10. Accordingly, it is directed that let the petitioner approach the respondent No.2 on 21st of June, 2023 itself. Subsequently, the respondent No.2 in turn shall ensure that the petitioner is subjected to medical termination of pregnancy under the supervision of two registered medical practitioners preferably two senior Doctors available in the said district after obtaining due consent of the petitioner as well as her guardian. Respondent No.1-Station House Officer is also directed to provide necessary assistance in this regard.
11. The DNA sample of the fetus shall also be taken and preserved for further evidence as the criminal case against the accused is still pending. Let this exercise be carried without any further delay.
12. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge