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1 THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.14658/2021
Prosecutrix Vs. The State of M.P. and others

Gwalior, Dated:10/08/2021

Shri Ranjeet Khanvilkar, Advocate for petitioner through video conferencing.

Shri A.K. Nirankari, Government Advocate for respondents/State.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

“It is humbly prayed that before this Hon'ble court that the petition of petitioner may kindly be allowed and petitioner may kindly be permitted to terminate the pregnancy and respondent no.2, may kindly be directed to follow the procedure of termination of pregnancy, in the interest of justice.”

It is submitted by the counsel for the petitioner that on the report of the petitioner an FIR in Crime No.317/2021 has been registered at Police Station Madhoganj, District Gwalior. It is the case of the petitioner that she is aged about 19 years and she was a friend of one Rocky Shakya for the last five years and they were liking each other. They were on talking terms. Rocky Shakya had also promised that he would marry the prosecutrix and on this pretext he was having physical relationship with her for the last 4-5 years. Whenever she asked Rocky Shakya to marry her, then every time he promised that she should not worry and he would marry her only. As the prosecutrix was in love with Rocky Shakya, therefore, she was

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relying on his promise. It was further alleged that whenever Rocky Shakya used to be alone in his house, then he used to call her and they were having the consensual sex with each other. 3-4 months prior to the date of lodging of FIR, she went to the house of Rocky Shakya on his invitation. At that time he was all alone in the house. Rocky offered sex which was refused by the prosecutrix, however, on the pretext of marriage, he committed rape on her without her consent. For the last few days her health was deteriorating. On 26/7/2021 she went for medical examination and she was advised for ultrasound by the Doctor and after ultrasound, she came to know that she was pregnant. When the aspect of pregnancy was told to Rocky Shakya and he was requested to marry her, then Rocky Shakya refused to marry her. Accordingly, it is alleged that on the pretext of false promise of marriage, accused Rocky Shakya was having sex with her. It is submitted that accordingly, she may be permitted to terminate her pregnancy.

Heard learned counsel for the petitioner.

It is the allegation of the prosecutrix that she was in deep love with Rocky Shakya and she was having consensual sex with him. The petitioner is aged about 19 years, therefore, she is mature enough to realize the consequences of consensual sex without any precaution.

As per Section 3 of the Medical Termination of Pregnancy Act,

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1971 (in short “Act, 1971”), permission for termination of pregnancy can be given where the pregnancy does not exceeds 12 weeks, but does not exceed 20 weeks and two registered Medical Practitioners are of the opinion that the continuance of the pregnancy would involve a risk to life of a pregnant woman or a grave injury to her physical or mental health or there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. By way of explanation (1) where the pregnancy is caused by rape, the anguish shall be presumed to constitute a grave injury to a mental health and as per explanation (2) where the pregnancy occurs as a result of failure of any contraceptive device or methods used by married woman or her husband for the purpose of limiting the number of children, the anguish caused may be presumed to constitute a grave injury of a mental health to a pregnant woman.

In the present case, the petitioner has annexed the copy of Sonography report of GR Medical College & JA Group of Hospitals, Gwalior to show that the petitioner is carrying the pregnancy of 12 weeks and 6 days on 29/7/2021. Thus, it is clear that the pregnancy of the petitioner has crossed 12 weeks. Now the pregnancy can be terminated only as per the provisions of Sub-Section (2) of Section 3 of the Act, 1971. By way of explanation (1) where the pregnancy is

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caused by rape, the anguish shall be presumed to constitute a grave injury to a mental health.

Therefore, in the present case, the pivotal question for consideration is that the sex with Rocky Shakya was a consensual sex or it was sex with the consent of the petitioner which was obtained by misrepresentation of fact.

This Court is conscious of the fact that an FIR in Crime No.317/2021 has been registered at Police Station Madhoganj, District Gwalior for offence under Sections 376, 376 (2) (n), 506 of IPC and Section 5/6 of the POCSO Act, 2012. So far as the offence under the POCSO Act is concerned, it is the case of the prosecutrix that she is aged about 19 years. Furthermore, the petitioner herself has filed a copy of mark-sheet to show that her date of birth is 23/2/2002, therefore, it is clear that the prosecutrix is more than 19 years of age. Under these circumstances, it is clear that no offence under POCSO Act shall be made out. The FIR was lodged on 27/7/2021, which clearly shows that the petitioner must have conceived pregnancy sometimes in the month of April, 2021. Under these circumstances, it is clear that the petitioner became pregnant after 19 years of her age. In FIR itself it is specifically mentioned that since the petitioner was in deep love with Rocky Shakya, therefore, she used to visit the house of Rocky Shakya in absence of his family

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members and they used to have consensual sex. The petitioner is a major girl knowing fully well the pros and cons of consensual sex without any precaution. Even the FIR was lodged after it was detected that the petitioner is pregnant. For the purpose of this writ petition, the only question which requires consideration is as to whether the permission for medical termination of pregnancy can be given or not specifically in the light of the provisions of IPC that the termination of pregnancy is otherwise an offence.

This Court is of the considered opinion that since the petitioner involved herself in a consensual sex knowing fully well about the consequences of such act, and the allegations made in FIR, do not *prima facie* make out a case of consent obtained by misrepresentation of fact, therefore, under these circumstances, medical termination of pregnancy cannot be permitted. Accordingly, this petition fails and is hereby **dismissed**.

It is made clear that any observation made in this order is confined to this writ petition only and shall not have any bearing on the investigation or trial.

(G.S. Ahluwalia)
Judge

Arun*

