



2023:PHHC:137514

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

133

CWP-

Date of decision: 20.10.2023



.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - M  Sanjeev Sharma, Legal Aid Counsel
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Himmat Singh Sidhu, Advocate
for respondent No.2-PGI.

VINOD S. BHARDWAJ, J. (Oral)

1. The present petition has been filed for seeking issuance of directions to respondent No.2 i.e. Post Graduate Institute of Medical Education and Research, Chandigarh to terminate the pregnancy of the child in the womb of the petitioner which is stated to be 22 weeks (30 weeks as per the report).

2. The minor victim has approached this Court through her grand mother averring that an FIR No. 765 dated 21.09.2023 had been registered under Section 6 of the POCSO Act against unknown persons for having committed rape with the minor. As a result of such violation of the modesty,

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the minor got pregnant. It is averred that the child being conceived as a result of offence of rape committed on the minor, the minor does not intend to give birth to such child which is a constant reminder of the atrocities extended to the minor. The same is stated to be not good for the physical and mental Health as well as the social well being of the minor victim. The victim had been subjected to medical examination before the Civil Hospital, Karnal and a Medical Board was constituted for the same. The Medical Board has opined as under

"1. Patient had presented with h/o 7+ ½ months amenorrhoea. Her state LMP is 27.03.2023 as per patient. Ultrasound was done at DHC, Karnal on 26.09.2023.

2. Patient is conscious, cooperative, well oriented to time, place and person and her vitals are stable.

3. On per abdomen examination- Uterus 28-30 weeks relaxed. FHS present (Enclosure No. 1) page No.1 to 4.

4. Her investigations revealed on dated 26.09.2023. Hb 708 g/dl. Her Blood Group is)-positive. Viral marker HBSAg-Negative, HCV-negative (Blood investigation at enclosure no. 2 Page 5-8).

5. Ultrasound was done on 26.09.2023 and as per ultrasound "Single intrauterine gestation corresponding to a gestational age of 30 weeks with severe oligohydramnious & High resistence flow in umbilical artery. (Ultrasound Report at enclosure No. 3 Page 9-10)."

After considering the above observation and MTP Act.

As per MTP Board is off the opinion that:

As per MTP Amendment Act, 2021 Section 3 Clause 2(b) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

Medical Termination of Pregnancy of patient [REDACTED] [REDACTED] is not safe and life threatening to the mother due to advanced gestational age and the patient is minor.

As per patient is in third trimester (30 weeks as per USG on 26.09.2023), teenager minor pregnancy thin built high risk case, Anaemia so delivery at higher centre (KCGMCH Karnal) is recommended in view of risks related to termination and its consequences.

Board Members

1. *Dr. Shruti Sharma, Gynecologist, GH, Karnal.*
2. *Dr. Sarika Bishnoi, Radiologist, GH, Karnal.*
3. *Dr. Prabhjot Kaur, Gurunanak Hospital, Karnal Member from IMA.*
4. *Dr. Sunil Kumar, Pediatrician, KCGMC, Karnal.*

3. It is evident from the perusal of the report submitted by the Medical Board that the victim minor was in her third trimester (30 weeks as per USG on 26.09.2023). The present petition has been filed nearly 03 weeks thereafter. Hence, as on the date of filing of the present writ petition, the pregnancy is already more than 33 weeks.

4. The Medical Board has already opined that it will not be safe and would be life threatening to the mother due to advance gestational age

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and considering that the patient is minor. The passage of time and delay on the part of the petitioner in approaching this Court has only further aggravated the said aspect. There is no material available on record with this Court on the basis whereof this Court may differ with the opinion expressed by the Medical Board. Directing medical termination of this pregnancy at such an advanced stage would not only endanger life of the minor victim but is also likely to lead to a pre-mature delivery of the unborn child who may further suffer from abnormality as a result of such attempt.

5. Counsel for the respondents places reliance on the aforesaid opinion of the Medical Board and contend that the direction for medical termination of the pregnancy at such an advanced stage would be uncalled for. He has also pointed out to an order passed by this Court in CWP-13256-2023 wherein while declining permission for termination of the pregnancy, certain directions were issued in the larger interest of the petitioner as well as the minor unborn child. The said directions given in CWP-13256-2023 are extracted as under:-

- “i) The Civil Surgeon/Chief Medical Officer, Rewari is directed to ensure that all necessary medical facilities are made available to the petitioner, without the payment of fee, charges or expenses of any nature and to ensure that the delivery takes place in a safe environment.*
- ii) The privacy of the petitioner shall be maintained at all stages and identity of the petitioner be not divulged in the course of hospitalization and treatment.*
- iii) The child, on birth, may be handed over to the Child Welfare Committee of District Rewari and the petitioner shall fulfill all such necessary documentation and formalities as may be so required in law for handing*

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over custody of the said child to the Child Welfare Committee.

- iv) *The said Child Welfare Committee, Rewari shall take care of all needs and facilities of the child.*
- v) *The petitioner has no objection to the said child to be given in adoption by the State agency to the willing parents in accordance with law. Permission is thus granted for giving the child in adoption to the willing prospective parents, in accordance with law.*
- vi) *The above said directions are without prejudice to any other rights and entitlement of the petitioner under applicable policies/guidelines for financial assistance/rehabilitation.”*

6. Counsel for the petitioner has no objection in case identical directions are issued in the case of the petitioner herein as well. Hence, taking into consideration the totality of the circumstances noticed above, the advanced stage of the pregnancy, the present writ petition is disposed of in terms of the directions given by this Court in CWP-13256-2023 but with the modification that the minor victim should be treated and the delivery should be conducted at the “*Kalpna Chawla Government Medical College and Hospital*” as has been opined by the Medical Board taking into consideration the risks involved in the present case after noticing the anaemic condition of the minor and that the necessary expenses and responsibilities directed in the said case to be performed by the Child Welfare Committee of District Rewari should in fact be read as the responsibilities to be performed by the Child Welfare Committee of District Karnal.

7. The present writ petition is accordingly disposed of with directions as aforesaid. Disposal of the writ petition shall not prejudiced any

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other right of the petitioner to seek financial assistance/benefits under the applicable State schemes.

8. Copy of the order be handed over to the Legal Aid Counsel under the signatures of the Bench Secretary.

(VINOD S. BHARDWAJ)

JUDGE

OCTOBER 20, 2023

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No