

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 421 of 2022

"A"

... **Petitioner**

-Versus-

1. State of Jharkhand through the Secretary, Department of Social Welfare, Women and Child Development, Project Building, P.O. & P.S. Dhurwa, District- Ranchi
2. Deputy Commissioner, Ranchi, P.O. G.P.O., P.S. Kotwali, District- Ranchi
3. The Secretary, District Legal Services Authority, Ranchi, situated at Civil Courts, P.O. G.P.O., P.S. Kotwali, District- Ranchi
4. Officer in-charge, Nagri P.S. situated at Nagri, P.O. & P.S. Nagri, District- Ranchi
5. Rajendra Institute of Medical Sciences, through its Director, situated at Bariatu, P.O. & P.S. Bariatu, District- Ranchi

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. Shailesh Poddar, Advocate
For the State	: Mr. Kishore Kumar Singh, S.C.-V Mr. Vishnu Prabhakar Pathak, A.C. to S.C.-V
For the RIMS	: Dr. Ashok Kumar Singh, Advocate Mr. Shivam Singh, Advocate Ms. Madhu Priya, Advocate

04/14.09.2022. Considering the nature of issue engaging attention of this Court in this matter, the cause title of this case will now be read as under:

"A"

v.

State of Jharkhand through the Secretary, Department of Social Welfare, Women and Child Development, Project Building, P.O. & P.S. Dhurwa, District- Ranchi & others.

2. Heard Mr. Shailesh Poddar, learned counsel for the petitioner, Mr. Kishore Kumar Singh, learned S.C.-V assisted by Mr. Vishnu Prabhakar Pathak, learned counsel for the respondent-State and Dr. Ashok Kumar Singh assisted by Mr. Shivam Singh and Ms. Madhu Priya, learned counsel for the respondent-RIMS.
3. This petition has been filed for direction to provide a shelter home for the "A" for her safety and security and as per the needs of the "A" considering she is 100% visually impaired. The prayer has also been made

for direction of constituting a Medical Board for termination of the fetus. The further prayer has been made for direction to appoint a senior female medical practitioner and social worker to take care of the "A".

4. The "A" was subjected to gang rape in the year 2018 where an FIR was lodged bearing Nagri P.S. Case No.191/2018 under Section 354/376D of the Indian Penal Code and Section 4/8 of the POCSO Act. The charge-sheet has been filed in the said case before the court of the learned Additional Judicial Commissioner IV-cum- Special Judge (POCSO Act), Ranchi under Section 376(2)(f)/376(2)(i)/376(3) of the Indian Penal Code and Section 4/6 of the POCSO Act against her own brother and uncle. She was further subjected to rape by her own family members.

5. Mr. Shailesh Poddar, learned counsel for the petitioner submits that the "A" was subjected to gang rape by her own family members. He further submits that at present the "A" is living with her father, who is a rickshaw puller and he has to stay out during the day for earning livelihood. He also submits that the "A" is complete blind.

6. Mr. Kishore Kumar Singh, learned counsel for the respondent-State on instruction submits that there is no rehabilitation centre in the capital city of Ranchi and the said centers are only available at Ramgarh and Hazaribagh, which are under the scheme of the Union of India.

7. Seeing the nature of vulnerability of the "A", this Court vide order dated 08.09.2022 directed the RIMS Director to constitute a Medical Board to examine the "A" and to find out whether pregnancy can be terminated or not. Pursuant thereto, the RIMS has constituted a Medical Board. The report of the Medical Board has been placed on record. In the Medical Board, Dr. Sarita Tirkey, HOD Obst. & Gynae, Dr. Rajiv Mishra, HOD Neonatal, Dr. Ajay

Baxla, HOD Psychiatry, Dr. C.B. Sharma, Professor of Medicine, Dr. Ladhu Lakra, HOD Anaesthesia and Dr. Suresh Kumar Toppo, Professor of Radiology are the members and after examining the "A", the Medical Board found that the termination of 28 weeks pregnancy is risky. The report of the Medical Board is quoted herein below:

"Medical Board Report

We have examined the lady aged 19 years, of case No. W.P. (Cr.) 421/2022 vide Superintendent RIMS letter no.3592 dated 09-09-2022.

According to the history, clinical examination and investigations the board opines that:-

- 1. Regarding the length of her pregnancy:*
 - a) By LMP (last menstrual period) March 2022, date not remembered by patient so the length of pregnancy by LMP is **inconclusive**.*
 - b) Clinically it is 26 to 28 weeks of gestation.*
 - c) By **Ultrasound** it is 25 weeks \pm 01 day of gestation.*

As such according to the MTP act, M.T.P. beyond 24 weeks with no congenital anomaly of the fetus is not permissible (MTP Act Amendment 12 October 2021)

- 2. Regarding her general conditions: Clinically and by investigation reports, she seems to be almost physically fit; except for her mild anaemia (Hb 9.5gm/dl), which can be treated according to the need, and her blindness.*
- 3. **The termination of pregnancy at this stage is associated with the inherent risks of the complications of second trimester termination of pregnancy.**"*

8. The question arises for consideration by this Court as to whether it would be justified or legal to give direction for termination the pregnancy of the "A" where the uterus is around 28 weeks and termination at this stage is risky as per the Medical Board report. Section 3 of the Medical Termination of Pregnancy Act, 1971 speaks when pregnancies may be terminated by registered medical practitioners, which is quoted herein below:

"3. When pregnancies may be terminated by registered medical practitioners.—(1) Notwithstanding anything contained in the Penal Code, 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 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 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 I.—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 II.—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 to 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), no pregnancy shall be terminated except with the consent of the pregnant woman."

9. Section 5 of the Medical Termination of Pregnancy Act, 1971 speaks when Sections 3 and 4 of the Act will apply. Section 5 of the said Act is quoted herein below:

"5. Sections 3 and 4 when not to apply.—(1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Penal Code, 1860, the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.—For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.—For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply."

10. On perusal of Section 5, it transpires that the termination of pregnancy, which is necessary to save the life of the pregnant woman, is permissible.

11. The Court considered the Medical Board report, which in clear terms speaks that the termination of pregnancy is risky. The Court will not allow to put the life of the "A" in danger in light of the clear finding of the Medical Board.

12. In the case in hand, it transpires that termination of pregnancy could have been risky to the life of the "A" as per the report of the Medical Board at RIMS, which was constituted as per the direction of this Court on 08.09.2022. This situation could have been avoided had the decision been taken at the appropriate time when the occurrence took place.

13. In the case of **Z v. State of Bihar and others**, reported in **(2018) 11 SCC 572**, the Hon'ble Supreme Court at paragraph no.58 of the said

judgment observed that it needs to be stated that the High Courts are required to be more sensitive while dealing with matters of the present nature.

14. This matter was brought by way of filing representation before the competent authority including the District Legal Service Authority, Ranchi, however no compensation till date has been paid to the "A", who is 100% blind. This aspect of the matter has also been supported in the Medical Board report. There are schemes of the Government to compensate such victim. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Assessment of the Criminal Justice System in Response to Sexual Offences in RE***, reported in **(2020) 18 SCC 540**. Paragraph 26 of the said judgment is quoted herein below:

"26. Section 357-A(2) Cr.P.C. provides for award of compensation to the victims. The District Legal Service Authority or the State Legal Service Authority are bound to decide as to the quantum of compensation to the victim on the recommendation of the Court. By the order of this Court in Nipun Saxena v. Union of India, the National Legal Services Authority, New Delhi had prepared a Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes-2018. This Scheme has been circulated among all the States for necessary actions. The Scheme comprehensively provides for the rehabilitation and compensation for the victims of rape."

15. In the case of ***Suchita Srivastava & another v. Chandigarh Administration***, reported in **(2009) 9 SCC 1**, the Hon'ble Supreme Court held in paragraphs 20, 21 and 22, which are quoted herein below:

"20. ... A plain reading of the above-quoted provision makes it clear that Indian law allows for abortion only if the specified conditions are met.

21. When the MTP Act was first enacted in 1971 it was largely modelled on the Abortion Act of 1967 which had been passed in the United Kingdom. The legislative intent was to provide a qualified "right to abortion" and the termination of pregnancy has never been recognised as a normal recourse for expecting mothers.

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. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices."*

16. Thus, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. In light of the above judgment, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute are fulfilled.

17. The physical, mental, psychological trauma suffered by the "A" is formidable. Rape is a crime not only against a woman but against humanity at large as it brings out the most brutal, depraved and hideous aspects of human nature. It leaves a scar on the psyche of the victim and an adverse impact on society. In the case in hand, the agony experienced by the "A" has left a more visible impact as this "A" is 100% blind. Thus, this Court does feel that her welfare is, therefore, paramount consideration for this Court. However, as regards the legal position discussed above and the mandate of Section 3 of the Medical Termination of Pregnancy Act, in particular, leads the Court to only one conclusion i.e., since the length of the

pregnancy of the victim is over 28 weeks, it cannot permit its termination.

18. In view of the above facts and circumstances of the case in hand, the Court believes that it may be necessary to pass certain orders in the interest of the victim and the unborn child keeping in view the welfare of the mother, child and parents of the victim. The Court thinks it appropriate to issue following directions:

- (i) The Deputy Commissioner, Ranchi shall ensure that arrangements are made to provide proper diet, medical supervision and medicines as may be necessary to the victim throughout the remaining part of her journey of pregnancy. When the time for delivery arrives, proper medical facilities be made available for a safe delivery of the child.
- (ii) The "A" shall be put in any proper rehabilitation centre of the Government of Jharkhand or being operated under the scheme of the Union of India.
- (iii) The State Legal Services Authority shall ensure that the State Government shall pay an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation to the victim. This amount shall be over and above the compensation amount, if any, the learned trial court may direct to be paid to the victim and/or her child at conclusion of the trial in the underlying proceedings.
- (iv) The said amount shall be deposited in any nationalised bank in the name of "A".
- (v) The Deputy Commissioner, Ranchi will ensure to open the bank account in the name of the victim in any nationalised bank,

chooses by her father.

- (vi) As soon as the new born baby gains her mental balance and equilibrium, he/she will be allowed admission in a proper class in an appropriate school.
- (vii) Considering that there is no rehabilitation centre for such victim in Ranchi, this Court request the Chief Secretary of the Government of Jharkhand, Secretary, Department of Social Welfare, Women and Child Development, Government of Jharkhand and the Deputy Commissioner, Ranchi to take up this issue of creating such rehabilitation centre at Ranchi so that the rehabilitation centre in the capital city may help such victim in future. This Court hope and trust that the said officials of the State shall consider the request of this Court in its right perspective.
- (viii) The authority concerned shall also consider the disability pension so far the "A" is concerned, who is 100% blind.

19. With the above observations and directions, this petition stands disposed of.

20. Let a copy of this order be communicated to the Chief Secretary, Government of Jharkhand, Ranchi, the Secretary, Department of Social Welfare, Women and Child Development, Government of Jharkhand, the Deputy Commissioner, Ranchi and the District Legal Service Authority, Ranchi.

21. The certified copy of this order shall be issued forthwith.

(Sanjay Kumar Dwivedi, J.)