

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 26<sup>TH</sup> DAY OF JULY 2021 / 4TH SRAVANA, 1943

WP(C) NO. 12278 OF 2021

WRIT PETITIONER/S:

KERALA STATE LEGAL SERVICES AUTHORITY  
NIYAMA SAHAYA BHAVAN, HIGH COURT, KOCHI-682031,  
ERNAKULAM, REPRESENTED BY ITS MEMBER SECRETARY,  
SRI. NISAR AHAMMED K.T.

BY ADVS.  
K.P.PRADEEP  
T.T.BIJU  
T.THASMI  
M.J.ANOOPA

RESPONDENT/S:

- 1 UNION OF INDIA  
REPRESENTED BY SECRETARY, MINISTRY OF WOMEN AND  
CHILD DEVELOPMENT, SHASTRI BHAVAN, NEW DELHI-  
110001.
- 2 STATE OF KERALA  
REPRESENTED BY THE SECRETARY, DEPARTMENT OF  
WOMEN AND CHILD DEVELOPMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 3 DIRECTOR OF MEDICAL EDUCATION,  
MEDICAL COLLEGE, KUMARAPURAM RD., CHALAKKUZHI,  
THIRUVANANTHAPURAM-695011.
- 4 STATION HOUSE OFFICER/INSPECTOR OF POLICE,  
KAZHAKOOTAM POLICE STATION, THIRUVANANTHAPURAM-  
695582.
- 5 SUPERINTENDENT,  
GOVERNMENT MENTAL HEALTH CENTRE, PEROORKADA,  
THIRUVANANTHAPURAM-695005.

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6 SUPERINTENDENT,  
SREE AVITOM THIRUNAL HOSPITAL- (SAT HOSPITAL),  
GOVERNMENT MEDICAL COLLEGE CAMPUS, CHALAKKUZHI,  
THIRUVANANTHAPURAM-695011.  
BY ADV SHRI.P.VIJAYAKUMAR, ASG OF INDIA  
BY SMT.VINITHA B, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 26.07.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**P.B.SURESH KUMAR, J.**

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**W.P.(C) No.12278 of 2021**  
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**Dated this the 26<sup>th</sup> day of July, 2021**

**J U D G M E N T**

The Kerala State Legal Services Authority is espousing the cause of a hapless rape victim diagnosed with psychosis.

2. The victim was found wandering within the limits of Kazhakoottam Police Station and was taken by the Police initially to a psycho-social rehabilitation centre and then to the Mental Health Centre, Peroorkada. The Medical Board at the Mental Health Centre found the victim to be pregnant, having gestation period corresponding to eight weeks as on 4.6.2021. As the relatives of the victim could not be traced, the

Superintendent of the Mental Health Centre apprised the plight of the victim to the District Legal Services Authority and the writ petition is filed on that reference, by the Kerala State Legal Services Authority, seeking orders granting permission for medical termination of the pregnancy of the victim alleging that in terms of the provision contained in Section 3(4)(a) of the Medical Termination of Pregnancy Act, 1971(the Act), the victim being a major, her consent is required for terminating the pregnancy, and the victim is not in a position to grant consent for termination of the pregnancy.

3. Heard the learned counsel for the petitioner as also the learned Government Pleader.

4. Ext.P2 Certificate issued by the Medical Board attached to the Mental Health Centre, Peroorkada indicates that the victim is suffering from mental retardation with psychosis and is under treatment as inpatient. It is recited in the said Certificate that the victim is unable to take decision or

communicate her opinion.

5. In terms of the interim order passed by this Court on 16<sup>th</sup> June, 2021, the Permanent Medical Board attached to the sixth respondent hospital was directed to examine the victim and submit a report on the following aspects :

- i. Whether continuance of the pregnancy involves risk to the life of the victim.
- ii. Whether having regard to the stage of pregnancy, there is any danger other than the usual danger which arises even in spontaneous delivery or at the end of the full term, if the pregnancy is terminated.
- iii. The present mental condition of the victim and whether she is capable of communicating her opinion and taking decision on her own.
- iv. Whether continuance of the pregnancy would have any adverse impact on her mental condition.
- v. Any other matter, the Medical Board considers to be relevant.

A report was submitted accordingly, by the Medical Board referred to above stating, among others, that though continuation of the pregnancy does not endanger the life of the victim, there is a high risk for the mother and baby, as the victim is on multiple anti-psychotic medication. The operative portion of the opinion of the Medical Board reads thus :

1. Though continuation of pregnancy does not endanger life of woman there is a high risk for the mother and baby as she is on multiple antipsychotic medication.
2. Continuation of pregnancy is riskier than termination at this stage of pregnancy in view of expected maternal complications due to the present mental status.
3. To the question regarding the present mental condition of the victim and whether she is communicating her opinion and taking decision on her own, the opinion of the psychiatrist is as follows :

Based on the history and examination done on 17.6.21 at 11.00 am in SAT hospital, Trivandrum. Patient is able to communicate in her local dialect, language barrier present.

It is of the opinion that the patient requires observation and detailed evaluation, so as to comment upon her mental status conclusively and also to assess the capacity to take decision on her own.

4. As per the opinion of the psychiatrist regarding the question whether continuation of the pregnancy would have any adverse impact on her mental condition.

The adverse impact of continuation of the pregnancy on her mental condition could not be commented at present without the evaluation of her mental status in detail and serial observation.

5. On further interrogation with the patient some details could be traced out. According to her, name is Lilamkumari and her father's name is Param Bihari das and mother's name is Kanthi Devi. She has four siblings which includes two brothers and two sisters. Her house is at Sameli, Chuhar Village, in Bihar near Sivamandir (SAPAH Mandir), and there is a police station at Katihar where her uncle is working. She gives her husband's name as Shivaraj and she was abused and thrown out from her husband's house. Further details are not revealed on repeated interrogation.

6. The pregnancy of the victim in the case on hand is one that could be terminated on the basis of the opinion of a registered medical practitioner that the continuance of the pregnancy would involve a grave injury to her mental health, in terms of the provisions of the Act since its length does not exceed twenty weeks. Even otherwise, in the light of the provision contained in sub-section (2)(b)(i) of Section 3 of the Act and Explanation 2 to the said sub-section, the pregnancy is one that could be terminated on the basis of the opinion of two medical practitioners on the above lines. As noted, the impediment in the matter of terminating the pregnancy of the victim is that she is not in a position to give consent for the same.

7. The doctrine of “*parens patriae*” has been evolved in common law and is applied to situations where the State must take decisions in order to protect the interests of those persons who are unable to take care of themselves. This



doctrine has been applied in cases involving rights of minors and those persons who have been found to be mentally incapable of taking informed decisions for themselves. It is seen that courts in India have evolved different tests while exercising “parens patriae” jurisdiction for the purpose of making reproductive decisions on behalf of mentally ill persons. One among the said tests is the test of “best interests” which requires the court to ascertain the course of action which would serve the best interests of the person in question [See **Suchita Srivastava v. Chandigarh Admn.**, (2009)9 SCC 1]. Reverting to the facts, having regard to the fact that the person involved in the case is a rape victim and considering the opinion of the Medical Board, I am of the view that in a case of this nature, it is in the best interests of the person concerned to permit termination of her pregnancy.

In the result, the writ petition is allowed and respondents 5 and 6 are permitted to terminate the pregnancy

of the victim involved in this matter at the earliest in accordance with the provisions of the Act, without insisting on the consent of the victim. Having regard to the fact that the person is a rape victim, there will also be a direction to respondents 5 and 6 to take the tissue of the fetus and maintain the same for DNA examination.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

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APPENDIX

**PETITIONER EXHIBITS**

- Exhibit P1** TRUE COPY OF THE FIR IN CRIME NO.1252 OF 2021 DATED 18.5.2021 AT KAZHAKOOTTAM POLICE STATION.
- Exhibit P2** TRUE COPY OF MEDICAL BOARD CERTIFICATE NO.1685/2021.MHC/TVM DATED 4.6.2021 ISSUED BY THE 5TH RESPONDENT AND FORWARDED TO THE DISTRICT LEGAL SERVICES AUTHORITY, THIRUVANANTHAPURAM.
- Exhibit P3** TRUE COPY OF THE COMMUNICATION DATED 8.6.2021 FROM THE DISTRICT LEGAL SERVICE AUTHORITY, THIRUVANANTHAPURAM TO THE PETITIONER.