

Court No. - 9

Case :- MISC. BENCH No. - 19689 of 2021

Petitioner :- Kumari 'X' Thru Mother (Cr No. 316/2021)

Respondent :- State Of U.P. Thru Prin.Secy. Home Lucknow And Ors.

Counsel for Petitioner :- Mr. Nadeem Murtaza, Mr. Aditya Vikram Singh, Mr. Haider Rizvi

Counsel for Respondent :- Mr. Arunendra, Government Advocate

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Saroj Yadav,J.

1. Heard Mr. Nadeem Murtaza, learned counsel for the petitioner and Mr. Arunendra, learned A.G.A. for the State respondents.

2. This writ petition has been filed by the petitioner through her mother as she is minor girl, for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 (Chief Medical Officer-Kheri) to medically terminate the petitioner's pregnancy.

(ii) Issue a writ, order or direction in the nature of mandamus to the respondent no. 1 to provide compensation for the loss and injury caused by the offence under the Victim Compensation Scheme as provided under Section 357-A of the Code of Criminal Procedure."

3. Learned counsel for the petitioner submitted that the petitioner was subjected to physical violation and sexual abuse, resultantly she is carrying an unwanted pregnancy. The petitioner/victim is of 14 years of age. Giving birth to a child by victim of rape that too at such a tender age will make the future life of the

victim/petitioner more miserable and it would be improper to make the petitioner/victim suffer from the stigma attached to such pregnancy and birth. The petitioner/victim was subjected to a horrendous and despicable act against her will. If the pregnancy is allowed to continue and the child is born, it would be a continuous reminder of the said horrible incident in the life of the minor petitioner, who has her entire life before her. So the Court may direct the respondent no. 2 to medically terminate the pregnancy of the petitioner/victim. It is further submitted that the petitioner/victim moved an application along with Form C dated 17.08.2021 addressed to respondent no. 2- Chief Medical Officer, Kheri seeking medical termination of pregnancy under Section 3 of the Medical Termination of Pregnancy Act, 1971, amended vide Act No. 8 of 2021 for which the petitioner has also given her consent as provided under Rule 9, and the said fact is mentioned in paragraph no. 20 to the writ petition.

4. Learned A.G.A. did not oppose the submissions made by the learned counsel for the petitioner.

5. We considered the submissions made by the learned counsel for the petitioner and perused the record.

6. On the previous date i.e. 06.09.2021, this Court directed the respondent no. 2- Chief Medical Officer, Kheri to get the petitioner medically examined in order to ascertain the pregnancy which the petitioner is carrying and submit the report to this Court in a sealed cover.

7. In pursuance of the aforesaid order, we have

received the report of the Chief Medical Officer, Kheri in a sealed cover. Let it be made part of the record. We perused the report, it will be kept again in a sealed cover. According to this report, the petitioner/victim is carrying a pregnancy of 20 Weeks and 3 Days live foetus. The medical examination of the victim was done on 08.09.2021.

8. Section 3 of the Medical Termination of Pregnancy Act, 1971, amended vide Act No. 8 of 2021 (hereinafter referred to as "the Act of 1971), in this regard provides as under:-

"3. In section 3 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

"(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 twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are,

of the 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 any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be."

9. The report submitted by the Chief Medical Officer, Kheri depicts that victim is carrying a pregnancy of 20 Weeks and 3 Days. That is within the period limited by Section 3 of the Act of 1971 but keeping in mind, the risk factor of life to the victim, the respondent no. 2- Chief Medical Officer, Kheri is directed to constitute a Medical Board as prescribed in Section 3 of the Act of 1971 and get examined the feasibility of termination of pregnancy of the victim/petitioner within 24 hours of receipt of certified copy of this

order and get ascertained the feasibility.

10. Considering the facts and circumstances of the case, specially the fact that the victim was subjected to rape and she is carrying an unwanted pregnancy, which is constant cause of trauma and mental torture for her being a girl of tender age. This Court draws a presumption that the continuance of this unwanted pregnancy shall 'constitute a grave injury to the mental health' of the petitioner/victim, as provided by the legislature in Explanation 2 of Section 3 of the Act of 1971, quoted above as has been opined by the Hon'ble Apex Court in **Z Versus State of Bihar & Others, 2018 (11) SCC 572**.

11. In the light of the above, this Court allows the termination of pregnancy of the victim/petitioner subject to condition that Medical Board finds no risk to the life/health of the victim/petitioner.

12. As per the averments made in the writ petition, the father of the victim had died and her mother is not financially sound, as such, it is also directed that all the medical facilities required for getting the pregnancy of the victim/petitioner terminated and for any other treatment thereafter shall be provided at the expenses of the State Government. No money will be charged from the victim/petitioner or her family members. The Doctors performing tests/medical procedure for the purpose, will act with utmost sensitivity. As this relates to a crime, so it appears just and necessary that the necessary tissues from the foetus to be preserved. Accordingly, we direct the Chief Medical Officer concerned to take necessary tissues from the foetus and preserve the same. The tissues so preserved shall be kept in a

safe custody and be handed over to the Investigating Officer as and when he makes any such request. We also direct that the identity of the petitioner/victim shall not be disclosed. She will be referred as Km. 'X' in all the relevant documents.

13. As far as the prayer no. 2 made in the present writ petition regarding compensation is concerned, it is declined with liberty to the petitioner/victim to move an appropriate application before the District Legal Services Authority/Competent Authority. If any such application is made, the Authority concerned shall consider the same and take appropriate steps as per the Scheme/Rules.

14. Office is directed to send a copy of this order to the respondent no. 2- Chief Medical Officer, Kheri, forthwith for necessary compliance of the order passed today.

15. Sri Arunendra, learned A.G.A. is also directed to take necessary follow up action in the matter.

16. With the aforesaid observations and directions, this writ petition stands disposed of.

(Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 14.9.2021

Arun