

W.P.No.18043 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 15.07.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.18043 of 2022

... Petitioner

Versus

1. The State of Tamil Nadu,
Rep by the Inspector of Police,
AWPS, Polur, Tiruvannamalai.
2. The Dean,
Govt.Tiruvanamalai Medical College and Hospital,
Tiruvannamalai

...

Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the second respondent to terminate the 27 weeks pregnancy of _____ daughter of _____ aged 13 years through qualified doctors under the Medical Termination of Pregnancy (Amendment) Act, 2021 forthwith.

For Petitioner : Ms.P.Sevli

For Respondents : Mr.B.Vijay
AGP



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ORDER

The instant case has been filed by a desperate father of a victim girl seeking for medical termination of his minor daughter's pregnancy. The rape victim girl X was impregnated by the accused who has been charged with the offence in Cr.No.09/2022 under sections 5(j)(ii)r/w 6 of POCSO Act.

2. In the affidavit filed in support of this writ petition, the petitioner has stated that the minor victim girl is 28 weeks + 3 days pregnant. This Court, by its earlier order dated 14.07.2022, directed the first respondent to nominate a team of Doctors and medically examine the victim girl and submit a feasibility report with regard to the medical termination of her pregnancy. As directed by this Court, the first respondent has nominated a team of Doctors who have medically examined the rape victim girl and have filed an unanimous report before this Court on 14.07.2021. The said report dated 14.07.2022 is accompanied by a covering letter dated 14.07.2022 addressed by Dr.K.Thirumal Babu, MD.,DM, Government Thiruvannamalai Medical College Hospital, Thiruvannamalai to the State Government Pleader Office. In the Report, it has been submitted by the Doctors that the victim girl X is about 28



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weeks + 3 days pregnant and their recommendations have also been given. The

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relevant portions of the medical report dated 14.07.2022 reads as follows:

“Miss [redacted] D/o [redacted] ; aged-13 years,
residing at [redacted] ;

[redacted] is a PRIMI Gravida with LMP and
EDD – Not Known. IP No-971229, AR No-2675489.
Expert USG on (05/07/2022) – 28 wks + 3 days. Her
height is 139cm and weight is 36kg. BP is 110/70 mmHG.

*This gestation carries risk for termination of pregnancy
as well as continuation of pregnancy in the minor girl.”*

3. This Court heard Dr.S.Amutha, DDVL, Joint Director (MTP), Directorate of Family Welfare, Chennai and Dr.Vijaya Murali, Deputy Director (Inspection), Directorate of Family Welfare in open Court and they expressed that it is feasible to terminate the pregnancy of the petitioner's daughter. They also submitted that the rape victim is mentally weak and not in a position to deliver a child at such a young age.

4. Dr.Arumai Kannu, HOD of Obstetrics and Gynaecologist, Government Thiruvannamalai Medical College Hospital was also heard through



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video calling and she has also reiterated the Medical Report, which is placed on

record before this Court today and also confirmed that it is feasible to terminate the pregnancy of the victim girl and it is also feasible even though the gestational period is 28 weeks + 3 days.

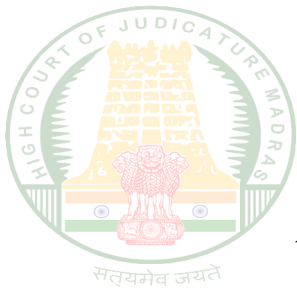
5. Section 3 of the Medical Termination of Pregnancy Act, 1971 deals with cases when pregnancy may be terminated by medical Practitioners and it reads as follows:

3. When pregnancies may be terminated by registered medical practitioners.—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 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



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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.

6. Here is a case where the length of pregnancy of the victim girl has exceeded 28 weeks + 3 days.

7. The Hon'ble Supreme Court in the case of *A vs. Union of India* reported in *(2018) 4 SCC 75* permitted termination in a case where the gestational age was 25-26 weeks. In *Murugan Nayakkar vs. Union of India* reported in *2017 SCC Online SC 1092*, the Hon'ble Supreme Court once again allowed termination of pregnancy in the case of 13 year old child and in *Sarmishtha Chakraborty vs. Union of India* reported in *(2018) 13 SCC 339* permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendations of the medical board.



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8. Similarly, in the case of *Meera Santosh Pal vs. Union of India* reported in **2017 3 SCC 462** permission for medical termination of pregnancy was granted when the pregnancy crossed 24 weeks, based on the medical reports pointing out the risk involved in the continuation of pregnancy. The Kerala High Court in the case of *Neethu Narendran vs. State of Kerala* reported in 2020 (3) KHC 157 has also permitted termination of pregnancy when the gestation age crossed 23 weeks.

9. The aforesaid decisions were followed by a learned Single Judge of this Court who permitted the medical termination of pregnancy of a rape victim whose gestation age was between 10 to 11 weeks in the case of *Mahalakshmi vs. District Collector and others* in his decision dated 19.01.2021 in W.P.(MD).No.659 of 2021.

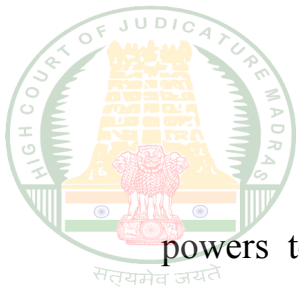
10. The two Doctors, who were present before this Court today, have also submitted that considering the physical and mental state of mind of the victim, it is advisable for early termination of her pregnancy.



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11. From the aforementioned decisions, it is clear that even in cases where the length of pregnancy has exceeded 20 weeks, this Court is having power to order for termination of pregnancy of the victim girl on the ground of grave danger to her physical and mental health.

12. Section 3 of the Medical Termination of Pregnancy Act, 1971 deals with cases for medical termination of pregnancy without intervention of the Court. Without intervention of the Court, a Registered Medical Practitioner can terminate the pregnancy in the circumstances mentioned in section 3(2) of the Medical Termination of Pregnancy Act, 1971. While exercising powers under Article 226 of the Constitution of India, this Court has got wider powers than what is prescribed under section 3(2) of the Medical Termination of Pregnancy Act, 1971 which permits the registered medical practitioner to terminate the pregnancy only when the length of pregnancy does not exceed a maximum period of twenty weeks. In the case on hand, the victim girl is 28 weeks + 3 days pregnant. However, considering the fact that the medical report recommends termination of her pregnancy and after giving due consideration to the fact that the victim girl is small statured and is only 13 years old, this Court exercising powers under Article 226 of the Constitution of India has got the



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powers to take judicial notice of those facts and can permit termination of victim's pregnancy. As observed earlier, the victim is also not physically and mentally strong to withstand the pregnancy and this Court has taken into consideration the said factor also.

13. Apart from the above reasons, this Court is also taking judicial notice of the fact that the petitioner is an agricultural labourer and surviving on hand to mouth existence. He admittedly belongs to the below poverty line category. If the minor victim girl is allowed to deliver a child, not only the victim, but also her parents will suffer. The petitioner has also stated that he came to know about her minor daughter's pregnancy only after coming to know that she did not get her menses for a long time.

14. For the foregoing reasons, this court is of the considered view that the petitioner is entitled to obtain a direction from this Court to the first respondent to terminate the pregnancy of her minor daughter X, aged 13 years approximately forthwith.



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15. Accordingly, this Court directs the first respondent to nominate

Team of specialised Doctors on 18.07.2022 who shall terminate the pregnancy of the petitioner's minor daughter X aged 13 years on the very same date. However, after terminating the victim's pregnancy, the first respondent shall preserve the foetus for carrying out the medical test for the purpose of criminal case pending against the accused in the Crime No.09/2022 of 2021 for the offence under section 5(j)(ii)r/w 6 of POCSO Act.

16. The Child Welfare Committee, Thiruvanamalai District is directed to render all possible assistance both to the victim girl and her parents during the period of their stay in the Hospital.

17. With the aforesaid direction, this writ petition is disposed of. No costs.

Post the matter for reporting compliance on 22.07.2022.

15.07.2022

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Index: Yes/No
Speaking Order/Non-Speaking Order
Note: Issue Order Copy Today

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ABDUL QUDDHOSE, J

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To

1. The Inspector of Police,
State of Tamil Nadu,
AWPS, Polur, Tiruvannamalai.
2. The Dean,
Govt. Tiruvanamalai Medical College and Hospital,
Tiruvannamalai

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