



2024:PHHC:002758

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

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CWP-29383-2023

Date of Decision: 10.01.2024

██████████

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. H.S. Bath, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G., Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed invoking writ jurisdiction of this Court for issuance of a writ in the nature of Mandamus directing the respondents to terminate the pregnancy of daughter (the victim) of the petitioner in view of the provision of the Medical Termination of Pregnancy Act, 1971.

Learned counsel appearing on behalf of the petitioner contends that the minor daughter of the petitioner aged about 15 years was abducted by ██████████ resident of village Ranga, Tehsil and District Sirsa on 10.08.2023. The minor daughter of the petitioner was recovered from the illegal custody by filing a criminal writ petition ██████████ titled as ██████████' After recovery, the minor was got medico-legally examined, whereupon, she was found pregnant of more than 12 weeks. Thereafter, the minor disclosed the fact to her mother (the petitioner) that ██████████ had committed rape upon her. In this regard, an FIR

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No. 0346 dated 28.11.2023 under Sections 363 and 366-A of the IPC had been registered at Police Station City Kharar, District SAS Nagar. He submits that the petitioner is a minor and continuation of her pregnancy will cause a great physical and psychological trauma to the minor and he further contends that the minor daughter of the petitioner being dependent for her own self is not in a situation to take care of the child in case she is supposed to deliver a child. Learned counsel for the petitioner submits that since the pregnancy is more than 12 weeks old, the petitioner is bound to approach this Court for seeking termination of the pregnancy in accordance with the statutory mandate.

3. Vide order dated 04.01.2024, the minor daughter of the petitioner was directed to appear before office of Civil Surgeon on 06.01.2024 for her medical examination and other necessary tests. A report from the Board of Directors was also called for in this regard.

4. Pursuant to the said order, the minor daughter of the petitioner appeared before the Medical Board of the AIMS, Mohali and subjected herself to the medical examination. A report of Board of Directors has been handed over to the Court today and the same is taken on record as Mark 'A'. The relevant extract of the said report as under:-

“Subject: Report of victim X, age 15 yrs resident of Village Bathlana, Mohali, Punjab, reference your office letter no. AIMS/MS/Mohali/2024/30 dated 08.01.2024.

Respected sir

On the subject under reference, medical board has been constituted for examination of victim X, age 15 years, resident of village Bathlana, Mohali reported for medical examination to Civil Surgeon Office, Mohali vide court order CWP-29383-2023 dated 04.01.2024 from Punjab and Haryana High court, Chandigarh,

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bearing MLC no. KK/45/2023 Dated 02/12/2023. The board member included:

1. Dr Susmita Sharma, Professor and HOD, Obstetrics and Gynaecology, AIMS, Mohali
2. Dr Vijay Bhagat, Radiologist and SMO, District Hospital, Mohali
3. Dr Nidhi Malhotra, Associate Professor, Psychiatry, AIMS, Mohali
4. Dr Manvi Singh. Assistant Professor, Pediatrics, AIMS, Mohali
6. Dr Nisha Bhagat. Assistant Professor, Gynaecology and Obstetrics, AIMS Mohali.

The medical board was called in the office room of Dr. Susmita Sharma in Department of Obstetrics and Gynaecology on 08.01.2024 as the above patient was asked to report to medical board on 08.01.2024 for the necessary examination. The patient was brought by Investigation officer Balwinder Singh (ASI) belt no. 123/S AS, Nagar, P/S Kharar.

Victim X was examined clinically and USG was done for fetal age and well being on 09/01/2024 Board is of the opinion that the gestational period is less than 20 weeks, which is permissible age for medical termination of pregnancy as per MTP Amendment Act 2021. So the victim is fit for Medical Termination of Pregnancy as per the clinical examination reports.

Attachments: Clinical examination slip, USG report with film, relevant antenatal investigations (All documents in original)”

He refers to provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 wherein pregnancies are permitted to be terminated by a Registered Medical Practitioner. Section 3 of the Medical Termination of Pregnancy Act, 1971 is extracted hereinafter below:-

“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 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 1.-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 2.-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.”*

That the continuation of the said pregnancy is likely to cause great pain to the petitioner who is a minor, and to her it will be a persistent reminder of the atrocity to which she had been subjected to. Furthermore, taking into consideration her tender age, it would also cause a great mental harm to the wellbeing of the child. The anguish caused by the pregnancy is itself sufficient to constitute grave injury to the mental health of the petitioner and that it would rather be in the betterment and best interest of the unborn child as well as the petitioner that the pregnancy is permitted to be terminated. He further contends that the minor has held detailed deliberation with her parents and they have voluntarily come to the conclusion that it would be in the larger interest of the petitioner's minor daughter that the pregnancy is terminated in accordance with the law.

I have heard the learned counsel appearing on behalf of the respective parties.

The Hon'ble Supreme Court in the matter of “X versus Union of India” reported as (2020) 19 SCC 806, has while considering the case regarding medical termination of pregnancy of a 13 year old rape victim, held that:-

“3. Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board

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constituted by this Court, we think it appropriate that termination of the pregnancy should be allowed”.

It is not in dispute that the victim is a minor even as on date and is dependent on her family. She is yet to complete her education and pursue her goals in life. It can also not be lost sight of the fact that the pregnancy is an outcome of violation of the minor. It is a testimony to her bruised body and soul. The child, if born, is not a reminder of good memories, but shall be a reminder of trauma and agony she had to undergo. As an unwanted child, the member is also likely to either live a tormenting life filled up with taunts to his/her origin or only to be given away. In either of the said situation, the mother as well as the child shall suffer social stigma and incarceration for rest of their lives. The same is not in the best interest of either of the mother; and her family already having expressed their unwillingness to bring up the child, it may not even be advancing the cause of the unborn, who will grapple to come to terms with life and be subjected to maltreatment for no fault. Such decisions are tough, however, life is not just about being able to breathe – rather it is about being able to live with dignity. Where the denial of dignity and social as well as family acceptance or approval is a writing on the wall, it compounds agony of the child and leads to greater injustice. Balance thus needs to be drawn to examine the overall wellbeing. Whether to shape the trauma of a victim or to prolong it by delivery of the child, who is to be only victimized. The choices thus reduce and it seems more prudent to allow the termination of pregnancy.

There is also no reason for this Court to presume that the opinion given by the Medical Board concerned is not in good faith and as to how the continuation of this pregnancy would be in larger interest of the mother.

At this stage, the petitioner contends that Medical Board of the Dr. B.R. Ambedkar Institute of Medical Sciences, Sector 56, S.A.S. Nagar (Mohali),

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Punjab is a medical institute which is nearer to the petitioner with higher centrally equipped functional ICU and that the said Medical Institute may be directed to conduct the medical termination of the pregnancy in accordance with the law.

Resultantly, the Director of Medical Board of the Dr. B.R. Ambedkar Institute of Medical Sciences, Sector 56, S.A.S. Nagar (Mohali), Punjab is directed to take all appropriate and necessary steps needed to carry out the medical termination of the pregnancy of the petitioner's minor daughter upon satisfaction of all such necessary conditions as prescribed in law.

The petitioner alongwith her minor daughter (victim) shall approach the abovementioned Medical Institute and/or the Authorities of the said Institute on or before 18.01.2024 whereupon expeditious steps shall be taken for termination of the pregnancy in accordance with law.

The petitioner would be at liberty to espouse her financial status before the Authorities concerned and be entitled to the benefit under the prevalent schemes in accordance with the Rules.

Consequently, the present petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 10, 2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No