

[3] By the present Application, the applicant has questioned the correctness of the order passed by the learned Addl.Sessions Judge, Udgir I/c. Addl.Sessions Judge, Ahmadpur, by which the learned court below

rejected the request made by the applicant to terminate the pregnancy of her minor daughter, who is the prosecutrix.

[4] F.I.R. was registered against the accused person alleging that he abducted the prosecutrix and committed rape on her. On the basis of said F.I.R., Crime is registered with Police Station, Ahmedpur, Dist. Latur *vide* C.R. No.260/2014. It is case of the prosecution that age of the prosecutrix is 14 years. According to the applicant, due to commission of rape, prosecutrix became pregnant and presently her *foetus* is of 13 weeks. The applicant moved an application before the learned Sessions Judge and sought permission from the Court to terminate pregnancy of the prosecutrix. Said application is rejected by the learned court below on the ground that it will be destruction of evidence against the accused and that there is no specific report of Medical Officer that due to pregnancy there is threat to victim girl.

[5] It will be useful to have a glance to Section 3 of the Medical Termination of Pregnancy Act, 1971. Paragraph No.3 of Statement of Objects and Reasons reads as under :-

There is thus avoidable wastage of the mother's health, strength and, sometimes, life. The proposed measure which seeks to liberalise certain existing provisions relating to termination of pregnancy has been conceived (1) as a health measure – when there is danger to the life or risk to physical or mental health of the woman; (2) on humanitarian grounds – such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc; and (3) eugenic grounds – where there is substantial risk that the child, if born, would suffer from deformities and diseases.

Section 3 of the Act reads thus :-**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 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.

[6] In view of the explanation I of Section 3 aforesaid, it is clear that when the pregnancy is on account of rape, it has to be presumed to constitute a grave injury to the mental health of the pregnant woman.

[7] Perusal of the impugned order clearly shows that, this aspect is not at all considered by the learned Judge of the court below. Further no one can force motherhood on the victim girl, on the precious ground, if the termination of pregnancy is permitted it will destroy the evidence. Care can be taken by directing the medical expert to preserve the *foetus* for D.N.A. test. In that view of the matter, I propose to pass the following order :-

ORDER

- (i) Criminal Application is allowed.
- (ii) Order passed by learned Addl.Sessions Judge, Udgir I/c. Addl. Sessions Judge, Ahmadpur dated 16th December, 2014 rejecting application of the applicant to terminate the pregnancy of the minor victim, is hereby set aside.
- (iii) The learned court below is directed to issue necessary directions to the Medical Officer to perform the medical termination of pregnancy of the prosecutrix in CR No.264/2014 registered with Police Station, Ahmedpur, Dist. Latur, in conformity with the provisions of the Medical Termination of Pregnancy Act, 1971.
- (iv) Looking to the fact that the pregnancy is 13 weeks, it is expected from the learned Addl.Sessions Judge to act swiftly and pass suitable orders, within one week from receipt of this order.

- (v) *Humdust* granted.
- (vi) Rule is made absolute.

(V.M. DESGHPANDE, J.)