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

**CWP No.19343 of 2015
Date of decision:16.09.2015**

Shewata (minor) daughter of Sh. Rudarpal ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajinder Singh Malik, Advocate,
for the petitioner.

Mr. Rajesh Sheoran, Addl. A.G., Haryana.

Mr. Rajesh Garg, Senior Advocate, with
Ms. Namrata Shergil, Advocate, for PGIMER, Chandigarh.

Rakesh Kumar Jain, J. (Oral)

This petition is filed by one Rudarpal, father of a minor girl, who has been referred to as 'X' in the previous order passed by this Court on 14.09.2015, allegedly aged 14 years, allegedly raped by one Shaukeen, aged 30 years, who was allegedly a tenant in the house of Rudarpal. The alleged occurrence was reported to the police and FIR No.58 dated 21.08.2015 was registered under Section 376 of the Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Women Cell, Sonapat. Incidentally, 'X' has got pregnant. Her father has filed this petition for seeking a writ in the nature of *mandamus*, directing the

respondents/State Authorities to terminate her pregnancy, *inter alia*, on the ground that 'X', being a minor girl, is unable to bear the child and would enhance her anguish and agony because of the rape.

On 14.09.2015, this Court passed the following order:-

“This petition is filed by Rudarpal son of Hari Chand, father of minor girl [herein referred to as ‘X’], who is allegedly 14 years of age and has been raped. At present, the girl is 3½ months old pregnant and her father has prayed for the termination of her pregnancy, keeping in view, not only her age but also the fact that she does not want to carry the child of the rapist.

Section 3 of the Medical Termination of Pregnancy Act, 1971 [for short the ‘Act’] provides that a pregnancy may be terminated by registered medical practitioner, 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 the opinion, formed in good faith, that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental or there is a substantial risk that if the child is born, would suffer from such physical or mental abnormalities, and 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.

Section 3(4) of the Act further provides that 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 lunatic, shall be terminated, except with the consent in writing of her guardian. Section 4 of the Act further provides that no termination of pregnancy shall be made in accordance with this Act at any place other than a hospital established or maintained by Government or a place, for the time being approved for the purpose of this Act by the Government.

Undoubtedly, the length of the pregnancy of 'X' is now has exceeded 12 weeks as it is stated that her pregnancy is 3½ months old, therefore, in view of Section 3(2)(b) of the Act, opinion of two registered practitioners is necessary, before passing any kind of order, who would form an opinion about the termination of the pregnancy of 'X'.

Although, the petitioner has not impleaded PGIMER, Chandigarh as a respondent but keeping in view the serious issue involved, this Court requests the Director, PGIMER, Chandigarh to get 'X' examined by two Gynecologists and submit their report as to whether

the pregnancy of 'X' can be terminated at this stage.

Notice of motion to the respondents.

On the asking of the Court, Mr.Pradeep Prakash Chahar, DAG, Haryana accepts notice on behalf of the respondents.

Learned counsel for the petitioner is directed to hand over equal number of paper books to counsel for the State during the course of day.

Adjourned to 16.9.2015.

Registry is directed to send a copy of this order immediately to the Director, PGIMER, Chandigarh for compliance.

Learned counsel for the petitioner is also directed to contact the Director, PGIMER, Chandigarh for examination of 'X' by tomorrow.

A copy of this order be given to counsel for the parties under the signature of Special Secretary of this Court.”

Pursuant to the request made to the Director, PGIMER, Chandigarh for physical examination of 'X' by two Gynecologists, a team appears to have been constituted under Dr. Vanita Suri, Professor and Head of the Department of Obstetrics and Gynaecology, who had made the following report:-

“REPORT OF MEDICAL BOARD OF
CWP NO.19343 OF 2015

The Medical Board examined the case and following are the findings:

Name: 'X', 14 yrs. D/o Mr. Rudar Pal
Hospital Central Registration No.2015 0467 4349

Resident of : 1027, Gali No.9, Rishi Colony, Sonapat,
Haryana, India.

History and examination: As per history given by 'X' and her mother her last menstrual period was -2.4.2015. Her menstrual cycles have been irregular in the past. On examination, her – general condition is fair, mild pallor, pulse rate is 88/mt, Blood pressure – 100/70 mmHg. Cardiovascular and Chest examination is within normal limits. On per abdominal examination, fundal height of gravid uterus is equal to 24-26 wks period of gestation and fetal parts are palpable.

Obstetrics Ultrasound – Single live fetus with average gestational age of 25+1 weeks. Placenta is fundal posterior with normal amniotic fluid. Following are the fetal parameters (images attached):

Biparietal Parameter = 6.4 cm, 25wks 6 days

Head circumference 22.4 cms, 24 weeks 3 days

Femur length - 4.7 cm, 25 weeks 6 days

Abdominal circumference-18.9 cms 23 weeks + 5 weeks

Average gestation age - 25+2 weeks $\pm$ 1 week 2 days

As per Medical Termination of Pregnancy (MTP) Law,

pregnancy can be terminated till 20 weeks period of gestation. Since average gestational age of index case is 25 weeks $\pm$ 1 week 2 day, she is not a candidate for medical termination of pregnancy.

Sd/-
(VANITA SURI)

Sd/-
(MINAKSHI ROHILLA)

Sd/-
(NEELAM CHOUDHARY)

Sd/-
(ADITI MEHRA)”

It is apparent from the report that the pregnancy of 'X' cannot be terminated. In such circumstances, the question would arise as to what course of action should be taken?

Learned counsel for the petitioner has referred to a judgment of the Division Bench of this Court in the case of **Kavita vs. State of Haryana and others**, 2015(2) R.C.R. (Criminal) 606, for the issuance of directions.

I have heard learned counsel for the parties and perused the available record.

In **Kavita's case (supra)**, the victim was 12 years of age who was subjected to repeated sexual assaults and was burdened with pregnancy of 34 weeks. By the time the fact of pregnancy came to the notice of her mother, she had already crossed the maximum limitation of 20 weeks prescribed under Section 3 of the Medical Termination of Pregnancy Act, 1971 for the purpose of termination of unlawful and unwanted pregnancy. The petition filed for termination of pregnancy

did not find favour with the Single Bench as after the report of the PGIMER, Chandigarh, it was found that there was no imminent danger to life of the victim if the pregnancy was to continue. In the intra-court appeal, the Court found it desirable to constitute another Medical Board comprising of five subject-specialists from different streams to independently re-examine the victim and the PGIMER, Chandigarh, constituted a Medical Board of seven senior subject-experts to re-examine the victim in that case. It was found that though the risk of pregnancy is higher because of the age of the girl but termination of pregnancy at this period of gestation carries a higher risk to the girl than allowing the pregnancy to continue with regular pregnancy check up in Gynae OPD at weekly intervals. In the face of those facts and circumstances, various directions were issued for the well being of the victim in that case.

Taking a cue from the order passed in **Kavita's case (supra)**, this petition is also hereby disposed of with certain directions, which are as follows:-

- (i) Since Rudarpal, who is alleged to be a daily wage worker and is a resident of Sonapat, would find it difficult to visit Chandigarh very often and it would be easier for him to take 'X' for routine checkup to the Pt. B.D. Sharma University of Health Sciences, Rohtak, therefore, the Registrar, Pt. B.D. Sharma

University of Health Sciences, Rohtak, who is though not a party in this case, is directed to admit 'X' as an indoor patient as and when the need in this regard arises;

- (ii) The Registrar, Pt. B.D. Sharma University of Health Sciences, Rohtak shall provide a private room to 'X' so that she could be attended by her family member(s);
- (iii) It shall be the duty of the authorities of the Pt. B.D. Sharma University of Health Sciences, Rohtak to provide all requisite medicines, food, clothing and other facilities as are required to be made available to 'X' or her attendant(s), well in advance and the Professor and Head of the Department of Obstetrics and Gynaecology of the Pt. B.D. Sharma University of Health Sciences, Rohtak shall personally monitor such requirements;
- (iv) The Medical Superintendent of the Pt. B.D. Sharma University of Health Sciences, Rohtak shall be obligated to ensure meticulous compliance of every advice, recommendation, suggestion or order in this regard made to him/her by the Professor and Head of the Department to Obstetrics and Gynaecology

Department;

- (v) The Professor and Head of the Department to Obstetrics and Gynaecology of the Pt. B.D. Sharma University of Health Sciences, Rohtak would further supervise the periodical needs of 'X' like psychiatric consultation or related assistance from other departments of the Pt. B.D. Sharma University of Health Sciences, Rohtak, which shall also be provided timely;
- (vi) The authorities of the Pt. B.D. Sharma University of Health Sciences, Rohtak shall ensure adequate privacy to 'X' and her family members while she would be an indoor patient and the identity of 'X' shall not be disclosed and shall also not be exposed to the public and media.
- (vii) The Chief Secretary to the State of Haryana, Principal Secretary, Department of Health and all other concerned departments of State of Haryana are directed to ensure the reimbursement of bills or expenditure incurred on the victim by the Pt. B.D. Sharma University of Health Sciences, Rohtak, forthwith but not later than two weeks from the date of submission of the bills.

It is made clear that the petitioner shall always be at liberty to approach this Court for any other directions, if need arises.

With these directions, the present petition is hereby disposed of.

Before parting, I would place on record my appreciation to the authorities of the PGIMER, Chandigarh and the members of the Medical Board who have wasted no time in complying with the request made by this Court on 14.09.2015 and examined 'X' on the next day i.e. 15.09.2015 and produced the report today, enabling this Court to dispose of this case at the earliest to give appropriate relief to 'X' and her family members.

September 16, 2015
Sunil Devi

(**Rakesh Kumar Jain**)
Judge