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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CrI.) 2046/2016**

Decided on 25th July, 2016

BHIM SINGH BISHT

..... Petitioner

Through : Mr. Santosh Kumar Suman,
Adv. along with petitioner in
person.

Versus

THE STATE GOVT OF NCT OF DELHI & ORS Respondents

Through: Ms. Nandita Rao, ASC for the
State with Ms. Srilina Roy,
Adv. along with ASI D. K.
Tyagi P.S. Sonia Vihar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Petitioner is father of Ms. X. He has filed this petition under Article 226 of the Constitution of India praying therein that respondent no.1 be directed to add the name of Rahul and his associates in the FIR. He has also prayed that his daughter be permitted to abort her pregnancy.

2. As regards the first relief is concerned, same has not been pressed since offence under Section 376 IPC has been added in the FIR No. 39/2014, which was initially registered under Section 363 IPC at Police

Station Sonia Vihar, on the complaint of petitioner. Accused persons have also been arrested.

3. Second prayer has been vehemently pressed. Affidavit dated 19th July, 2016 of Ms. X has also been placed on record wherein she has supported the prayer of termination of pregnancy. She has stated that she wants to terminate her pregnancy for her safety and also to safeguard her future. She has further deposed that she was forcibly raped by the accused persons. She is present in Court and submits that she is under great mental stress, agony and trauma on account of her repeated rape.

4. Learned Additional Standing Counsel submits that statement of Ms. X has also been recorded by the Metropolitan Magistrate, Delhi wherein she has stated that she was kidnapped and raped and she wants to get her pregnancy terminated. It is further submitted that continuation of pregnancy is injurious to the health of Ms. X.

5. FIR No.39/2014 was registered under Section 363 IPC at Police Station Sonia Vihar on the complaint of petitioner, wherein he has categorically stated that his daughter (Ms. X), aged about 14 years, had gone to school on 30th January, 2014 at 7:30 am and had not returned.

6. During the course of hearing, it is pointed out that date of birth of Ms. X is 4th December, 1999 and at present she is sixteen years of age. It is submitted that in the month of March, 2016 Ms. X returned home on her own. She fell ill in the month of June, 2016, and was taken to a doctor and on ultra sound, it was revealed that she was carrying a pregnancy of twenty two weeks and six days. The ultrasound report of Dr. Rathore S. USG Trauma Centre has been relied upon. It is submitted that Ms. X is physically weak, inasmuch as, is under great mental stress due to the unwanted pregnancy. Being a rape victim, she is under great mental distress and is keen to get the pregnancy terminated, since it's continuation is a threat to her health.

7. Section 3 of The Medical Termination of Pregnancy Act, 1971 ('the Act' for short), reads as under:-

“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 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 pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account

may be taken of 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 lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in Cl. (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

(emphasis laid)

8. A perusal of sub-section 2 of Section 3 of the Act shows that a pregnancy can be terminated by a registered medical practitioner where the length of the pregnancy does not exceed twelve weeks as the continuation of the pregnancy may involve a risk to the life of the woman and a grave injury to her physical and mental health, inasmuch as, there may be a substantial risk to the child, if born, suffering from such physical or mental abnormalities to the extent of him being handicapped in more than one ways. Explanation 1 of sub-section 2 of Section 3 further envisages that, where pregnancy is caused by rape of the pregnant woman, it would raise the presumption that such a pregnancy will constitute a grave injury to the mental health of such pregnant woman. Section 3(2)(b) of the Act prescribes

the outer limit of twenty weeks for termination of the pregnancy, if in the opinion of two registered medical practitioners, the continuance of the pregnancy would involve a risk to the life of the pregnant woman or cause grave injury to her physical or mental health.

9. However, Section 5 (1) of the Act is an exception to the above rule, and reads as under:-

“5. Section 3 and 4 when not to apply- (1) the provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in case where he is of opinion formed in good faith, that the termination of such pregnancy is immediately necessary to save the life to the pregnant woman.”

10. A perusal of Section 5(1) makes it clear that the pregnancy beyond twenty weeks can be terminated, if in the opinion of two registered medical practitioners, termination of such a pregnancy is immediately necessary to save the life of the pregnant woman. In such an eventuality, the length of pregnancy, as envisaged in Section 3 of the Act, would not come in the way of termination of the pregnancy.

11. In somewhat similar circumstances, Gujarat High Court in Bhavikaben Vs. State of Gujarat & 3 Ors., 2016 LawSuit(Guj) 836, relying upon the doctor's opinion, permitted the termination of pregnancy by considering the mental and physical status of the rape victim. Pregnancy in the said case was of twenty four weeks.

12. A learned Single Judge of this Court, vide order dated 6th December, 2013 passed in W.P. (Crl.) No.2008/2013 titled as Ms. X Vs. Govt. of NCT of Delhi & Anr., has considered the issue of termination of pregnancy of a rape victim and has held as under:-

“9. To carry a child in her womb by a woman as a result of conception through an act of rape is extremely traumatic, humiliating and psychologically devastating. In similar circumstances, permission was granted by this Court in K.M. Mahima Vs State and Ors. 2003 VI AD (Delhi) 510; X v. The State (N.C.T. of Delhi) and Ors. 2013 (2) JCC 1068 and Janak Ramsang Kanzariya (Minor) thro' Manjuben Ramsang Kanzar v. State of Gujarat and Anr. 2011 Crl. L.J 1306.

10. The petitioner, aged 19 years, hails from poor strata of the society and is likely to face innumerable mental, physical, social and economical problems in future. There are no reasons to prevent her not to exercise her option voluntarily in her interest.”

13. In Chandrakant Jayantilal Suthar & Anr. vs. State of Gujarat, (2015) 8 Supreme Court Cases 721, a rape victim aged about 14 years had approached the Court for termination of pregnancy and Supreme Court ordered as under:-

“3. Looking at the peculiar facts of the case, we direct that Ms Maitri Chandrakant Suthar shall be examined by three senior most available Gynaecologists of Civil Hospital, Ahmedabad at Asarwa, along with Dr Riddhi Ketan Shukla, who had examined Ms Maitri on 25.07.2015, also by a Clinical Psychologist attached to the Civil Hospital. The aforestated team of doctors shall examine Ms Maitri and after having an interaction with her, shall decide whether there is a serious threat to her life, if the child is not aborted.

4. If the team of the aforestated doctors is of the view that termination of the pregnancy is immediately necessary to save the life of Ms Maitri, the doctor concerned of the Civil Hospital shall perform necessary surgery, if the petitioner and Ms Maitri desire to go through to such abortion, without taking any permission from this Court. If there is no unanimity among the doctors, majority view of the doctors shall prevail.

5. In case of abortion, the hospital authorities shall take necessary tissue from the foetus for DNA identification. ”

14. In this case, vide order dated 19th July, 2016, the Medical Superintendent of Deen Dayal Upadhyay Hospital was requested to form a medical board of two senior most Gynaecologists and one Clinical Psychologist to examine the prosecutrix and submit their opinion on (a) whether it is medically possible/safe to terminate the pregnancy and (b) whether, given the age and health of the minor girl, there is any danger to her life, if the pregnancy is not immediately terminated. Report has been received. First of all, no Clinical Psychologist was included in the medical board. Secondly, the report is also not clear and conclusive. It has been reported that it is medically possible to terminate the pregnancy but not safe to terminate the same. It is further stated that Ms. X, being a minor girl, will be treated as a high risk pregnancy with increased danger of complications during pregnancy and delivery.

15. In this case, each day matters in view of the length of pregnancy. There is urgency in the matter. Accordingly, instead of constituting another medical board and seek its opinion before hand, it would be appropriate, if the decision is left on the experts in the field to take a decision whether continuation of the pregnancy is a threat to the life of Ms. X and to proceed with termination of such pregnancy if it is found that it is necessary in view

of the threat to the life of prosecutrix more particularly, when in terms of the afore-stated provisions of the Act, the decision in this regard has to be taken by the doctors, whose opinion is paramount in this regard.

16. Accordingly, the Medical Superintendent of All India Institute of Medical Sciences, New Delhi is directed to constitute a medical board comprising of three senior Gynaecologists and one Clinical Psychologist to examine Ms. X and, after interaction with her, to form an opinion as to whether termination of pregnancy is necessary in view of the threat to life of Ms. X. If the board is of the view that termination of pregnancy is necessary, the doctor concerned shall take action for termination of pregnancy, without any further permission from this Court. If there is no unanimity amongst the doctors, the majority view of the doctors shall prevail.

17. It is further ordered that in case of abortion, the hospital shall take necessary tissue from the foetus for DNA identification.

18. Investigating Officer petitioner and Ms. X shall appear before the Medical Superintendent, All India Institute of Medical Sciences on 27th July, 2016 at 9:00 am. All arrangements for admission of Ms. X as indoor patient, if necessary, be made for the tests and subsequent treatment including the termination of pregnancy, depending upon the report of the doctors.

19. A copy of this order be given to learned Additional Standing Counsel under the signatures of Court Master to serve the same on the Medical Superintendent, through the Investigation Officer, for compliance.
20. Writ petition is disposed of in the above terms.

A.K. PATHAK, J.

JULY 25, 2016

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