

CWP No.22030 of 2016

[1]

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

**CWP No.22030 of 2016
Date of decision:09.08.2017**

Subbi ...Petitioner

Versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Kulbhushan Raheja, Advocate,
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

Rakesh Kumar Jain, J.

Initially, this petition was filed by the father of a minor girl for seeking termination of pregnancy of her daughter (who was allegedly raped), which was declined by the Board of Directors of the SHKM Government Medical College, Nalhar, Mewat, on the ground that gestational age of the foetus is of 23±2 weeks.

On 25.10.2016, following order was passed by this Court:-

“This petition is filed by the father of a girl aged 13-14 years [hereinafter referred as ‘x’], who was allegedly gang raped and consequently got pregnant. The petitioner has prayed for a direction to the respondents to terminate her pregnancy. It is not disputed that the pregnancy is of more than 20 weeks, therefore, in view of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 [for short ‘the Act’], before this Court considers the request made by the petitioner regarding termination of her pregnancy, it would be just an expedient to obtain the opinion of two registered medical practitioners in this regard as to whether it

would be safe for the health of 'x' to abort the child at this stage. The Director, PGI, Chandigarh (respondent No.4) is requested to get 'x' examined by senior gynaecologists and submit their report accordingly regarding termination of the pregnancy of 'x' at this stage.

Registry is directed to send a copy of this order immediately to the Director, PGI, Chandigarh (respondent No.4) for compliance and counsel for the petitioner is also directed to contact the Director, PGI, Chandigarh (respondent No.4) for examination of 'x'.

Adjourned to 3.11.2016.

To be shown in urgent list.

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

On 03.11.2016, the following order was passed:-

“Pursuant to my order dated 25.10.2016, the Director, PGI, Chandigarh has submitted report of the Medical Board constituted for ascertaining as to whether it would be safe to terminate the pregnancy of 'X'. The following report has been submitted: -

“In pursuance of the orders received from Superintendent (Writs), Hon'ble Punjab and Haryana High Court, Chandigarh vide order No.EV(9)PGI-MS/MA-63/2016 dated 27.10.2016, a Medical Board consisting of the following doctors has been constituted in the case of CWP No.22030 of 2016, Subbi Vs. State of Haryana and others:-

- i) Dr. Rashmi Bagga, Professor, Department of Obstetrics and Gynaecology, PGIMER, Chandigarh.*
- ii) Dr. Minakshi Rohilla, Additional Professor, Department of Obstetrics and Gynaecology, PGIMER, Chandigarh.*
- iii) Dr. Navneet Dhaliwal, Assistant Professor, Department of Hospital Administration, PGIMER, Chandigarh.*

The Board examined the patient on 27.10.2016. The findings are as follows: -

- (iv) Respondent No.3 may kindly be directed to provide a private room to the victim so that she could be attended by her family members.
- (v) Respondent No.3 may kindly be directed to provide all requisite medicines, food, clothing and other needful facilities, with further direction to head of the department of Obstetrics and Gynaecology to personally monitor such requirements.
- (vi) Respondent No.3 may kindly be directed to ensure adequate privacy to victim and her family members while she be in indoor patient with further direction not to disclose the identity of the victim and family.
- (vii) The State of Haryana, Principal Secretary, Department of Health and all other concerned department may kindly be directed to ensure the reimbursement of bill or expenditure incurred by the family within a stipulated period.”

The above application was filed on 08.11.2016 and on 23.01.2017, the following order was passed:-

“The learned State counsel shall intimate this Court, as to why, the compensation to a rape victim, as per the policy of the Government, should not be granted.

The claim of the victim for the said compensation be considered by the respondent by the next date of hearing.

The Court be apprised of the decision taken, on the next date.

Adjourned to 22.02.2017.”

On 20.04.2017, the following order was passed by this Court:-

“The petitioner had approached this Court for a direction for termination of pregnancy of his daughter ‘X’ who had allegedly been a victim of gang-rape. On account of medical conditions and stage of fetus, the PGI authorities had not approved the termination of pregnancy as a result of which she is reported to have delivered a child.

Without expression of any opinion regarding the applicability of the notification dated October 15, 2015 to the facts

of present case, a direction is issued that interim compensation of Rs.2 lacs will be paid to the daughter of the petitioner through her mother petitioner Subbi. Rs.1 lac will be released to the daughter of the petitioner whereas the remaining sum of Rs.1 lac of interim compensation will be deposited in the FDR account in the name of the minor, within a period of one month.

For compliance and further directions, now to come up on July 27, 2017.

The interim direction may not be considered as an expression of opinion on merits of the case and the same is subject to the final decision of this writ petition.”

Thereafter, on 27.07.2017, the following order was passed:-

“Learned counsel for the respondent-State is directed to produce the policy, if any, framed by the State of Haryana in respect of grant of compensation to the rape victim.

Adjourned to 01.08.2017.

To be shown in the urgent list.”

With the passage of time, prayers (iii) to (vii) made in the application became redundant because daughter of the petitioner has already delivered a male child. Thus, the only prayer of the petitioner, which can be considered at this stage is for grant of compensation. Already, by an interim order dated 20.04.2017, ₹2,00,000/- have been ordered to be paid, out of which ₹1 lac was ordered to be released to the petitioner (father of the minor girl) and ₹1 lac, as an interim compensation, was ordered to be deposited in the FDR in the name of the minor.

Pursuant to the order dated 27.07.2017, learned State counsel has produced the Haryana Victim Compensation Scheme, 2013 (hereinafter referred to as the “Scheme”), which has been prepared in terms of Section 357-A of the Code of Criminal Procedure, 1973. The Scheme was notified on 03.04.2013 but it is amended vide Haryana Government notification dated 28th

August, 2015. The Administration of Justice department has been made the Nodal Department for regulating, administering and monitoring the Scheme and the State Legal Services Authority has been made accountable for its functions under the Scheme and for furnishing periodical returns of the sums distributed by the State Government through the Nodal Department. As per Clause 5(3) of the Scheme, the District Legal Services Authority has to decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on the facts of each case and the quantum of compensation to be awarded to the victim or his dependents shall be as per Schedule I. Clause 9 of the Scheme provides for the appeal in case of denial to the compensation by the District Legal Services Authority.

Schedule I provides the description of injuries/loss and the minimum amount of compensation to be paid to the victims. Since we are concerned with the compensation to be paid to the rape victim for which the minimum amount fixed under the Scheme is ₹3 lacs.

This Court has already directed on 20.04.2017 to pay ₹1 lac to the petitioner (father of the victim) and ₹1 lac to the victim as an interim compensation. Insofar as the amount of ₹1 lac paid to the father of the victim is concerned, it is ordered to be adjusted towards the medical expenses, food and other needs which were required before and after the delivery of the child by the victim.

In prayer (ii) of the amended prayers, the petitioner has prayed for

compensation of ₹5 lacs for the victim. The victim was a minor girl of 13-14 years of age, who was allegedly gang raped. Clause 5(3) of the Scheme provides that the quantum of compensation to be awarded to the victim or her dependents shall be as per Schedule I, which further provides that for the purpose of compensation, the minimum amount should be ₹3 lacs, which means that the District Legal Services Authority cannot give compensation to the rape victim less than ₹3 lacs in any case. Clause 5(3) of the Scheme further provides that the District Legal Services Authority, while deciding the amount of compensation to be awarded to the victim, shall take into consideration loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. It further provides that the compensation may vary from case to case depending on the facts of each case.

Thus, keeping in view the aforesaid facts and circumstances, the prayer of the petitioner for grant of ₹5,00,000/- as compensation is hereby granted and it is ordered that besides ₹1 lac, already paid to the victim in terms of the order dated 20.04.2017, another sum of ₹4,00,000/- shall also be paid to the victim, which shall be deposited in her account in the shape of FDR.

Now the court has to see as to whether any compensation should be paid by the State for the rehabilitation of the son of the victim, who would not be in a position to earn livelihood for sustenance of the child born to her against her wishes.

Clause 5(3) of the Scheme empowers the District Legal Services Authority to award compensation on account of minimum sustenance amount required for rehabilitation including such incidental charges. It means that the

Court can direct the State Government to take the responsibility of the education of the child, born to the rape victim, till the age of his majority.

It is, thus, directed that the Nodal Department, namely, the Administration of Justice Department, Haryana, through the District Legal Services Authority, shall ensure free education of the child born to the rape victim in the Government School till he passes 10+2 and shall also deposit a sum of ₹3 lacs in the name of minor child born to the rape victim in the shape of FDR in a nationalized bank, out of which the victim shall be allowed to keep on withdrawing interest every month for the purpose of sustenance of the said child and shall withdraw the FDR only after attaining the age of majority by the said child.

With these observations, the present writ petition is disposed of.

August 09, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No