

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1930 of 2018

Kumari Anjali Verma alias Kumari Sarvati, aged 14 years, D/o Kamlesh Verma, through her father and guardian Kamlesh Verma S/o Late Narmada Prasad Verma, resided at Birgaon, Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of C.G., through the Secretary, Health and Welfare Department, Mantralaya, Naya Raipur, Distt. Raipur (C.G.)
2. Chief Medical and Health Officer, Raipur (C.G.)
3. Dr.B.R. Ambedkar Memorial Hospital, through Registrar, Raipur (CG)
4. Superintendent of Police, Raipur (CG)

---- Respondents

For Petitioner: Mr.Hari Agrawal, Advocate
 For Respondents/State: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/07/2018

1. The petitioner, who is a victim of rape and sexual violence, has preferred this writ petition for termination of her pregnancy which according to her is a result of commission of the offence of rape. The petition was filed on 11-7-2018 and looking to the urgency, the matter was taken-up for hearing on 12-7-2018 and Medical Board consisting of Dean, Dr. B.R. Ambedkar Memorial Hospital, Raipur; two senior gynecologists available in the hospital; one Radiologist and one Psychiatrist was constituted to examine the following aspects and report was directed to be submitted on 13-7-2018: -

1. Examination report of the patient with regard to her physical and mental stage.

2. Stage of pregnancy.
 3. Over all condition of foetus.
 4. How far the termination of pregnancy will be detrimental to the petitioner.
 5. How far it will be detrimental, if the petitioner is allowed to complete full term of pregnancy
 6. Investigation reports.
2. It is informed that against the accused person, offence under Sections 376 and 506 of the IPC; Sections 4 and 6 of the Protection of Children from Sexual Offences Act have been registered at Police Station Dharsiwa in Crime No.219/2018. Medical report has also been submitted before this Court on 13.7.2018.
3. Mr. Hari Agrawal, learned counsel appearing for the petitioner, submits that the petitioner, who is aged about 14 years, has been raped by the accused person pursuant to which FIR under Crime No.219/2018 in Police Station-Dharsiwa, Distt. Raipur has been registered and the petitioner was got examined in which she was found pregnant. She is ready and willing to undergo the termination of pregnancy. Since pregnancy beyond 20 weeks cannot be terminated without leave of the court and since the petitioner is carrying pregnancy of 26 weeks & 6 days and is likely to affect her psychologically and it endangers her life also, the petitioner has knocked the doors of this Court by filing this writ petition as stated herein-above to prevent her from severe mental agony of carrying unwanted pregnancy. Buttressing his submission by relying upon a decision of the Supreme Court in the matter of **Suchita Srivastava and another v. Chandigarh Administration**¹, a prayer has been made to direct termination of pregnancy applying the “best interests”

¹ (2009) 9 SCC 1

theory to prevent the petitioner from further mental agony which is a grave injury to her. Mr.Agrawal has prayed for issuance of an immediate direction in that regard.

4. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/respondents, submits that as per the direction of this Court, the petitioner was examined on 13-7-2018 by the medical team duly constituted and report has been placed on record.
5. I have heard learned counsel for the parties and also considered the medical report with utmost circumspection.
6. Before proceeding with the medical report, it would be appropriate to notice the relevant provisions by which pregnancy can be directed to be terminated under the Medical Termination of Pregnancy Act, 1971 (for short, 'the Act of 1971'). Section 3 of the Act of 1971 provides for when pregnancies may be terminated by registered medical practitioners and states 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 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 II.—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 reasonably 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.”

7. The aforesaid provision permits termination of pregnancy by a

registered medical practitioner with regard to the circumstances, formed in good faith, specified in sub-clauses (i) and (ii) of sub-section (2) of Section 3 of the Act of 1971 as stated herein-above. Likewise, Explanation I to sub-section (2) of Section 3 also provides in no uncertain terms that where the 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.

8. In this regard, the Supreme Court in **Suchita Srivastava** (supra) has laid down the guidelines based on the principle of “best interests” theory and held that the Court is required to ascertain the course of action which would serve the best interests of the person in question. Paragraphs 36 and 37 of the report are relevant and are extracted herein-below: -

“36. Courts in other common law jurisdictions have developed two distinct standards while exercising “parens patriae” jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the “best interests” test and the “substituted judgment” test.

37. As evident from its literal description, the “best interests” test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care

and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights.”

9. The Supreme Court in the matter of **X v. Union of India and others**² has clearly held that termination of pregnancy after 20 weeks to save life of pregnant woman (an alleged rape victim) in case of grave danger to physical and mental health of the said woman, is permissible, and observed as under: -

“13. Having perused the medical report (relevant extracts whereof have been reproduced hereinabove), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy.”

10. Similar proposition has been laid down recently by the Supreme Court in the matter of **X and others v. Union of India and others**³ and also in the matter of **Meera Santosh Pal and others v. Union of India and others**⁴.
11. In a more recent decision, Their Lordships of the Supreme Court in the matter of **Tapasya Umesh Pisal v. Union of India and others**⁵

2 (2016) 14 SCC 382

3 (2017) 3 SCC 458

4 (2017) 3 SCC 462

5 AIR 2017 SC 3931

have permitted termination of pregnancy of a woman, aged 24 years, in her 24th week of pregnancy wherein the Medical Board opined that baby if delivered would have to undergo several surgeries associated with high morbidity and mortality, and thus, granted permission.

12. Similarly, in the matter of **Mrs. A v. Union of India and others**⁶, the Supreme Court has granted permission for termination of pregnancy of a woman, aged 22 years, in her 25th to 26th weeks of pregnancy holding that continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy. Their Lordships held as under: -

“6. Upon evaluation of the petitioner, the aforesaid Medical Board has concluded that her current pregnancy is of 25 to 26 weeks. The condition of the fetus is not compatible with life. The medical evidence clearly suggests that there is no point in allowing the pregnancy to run its full course since the fetus would not be able to survive outside the uterus without a skull.

7. Importantly, it is reported that the continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy.”

13. At this stage, it would be appropriate to notice the medical report submitted by the Medical Board. In the medical report submitted, the condition of fetus i.e. gestation age of fetus has been indicated to be 26 weeks and 6 days and it has been stated as under: -

1. Patient is physical and mental health is in accordance to her age.
2. Patient is carrying 26 weeks + 6 days pregnancy (As per

USG reports).

3. Patient is carrying single live interuterine fetus of 26 weeks + 6 days.
 4. & 5. Considering the age and physical development of patient and looking to the age of pregnancy, both termination and continuation of pregnancy is detrimental to the patient's physical & mental health. However continuation of pregnancy may be more hazardous.
 6. Investigation and examination reports 06 pages.”
14. From the aforesaid medical report, it is quite vivid that the stage of pregnancy on the date of examination is 26 weeks and 6 days. It has been stated by the medical team that continuation of pregnancy may be more hazardous
15. The World Health Organization (WHO) in its report (updated January, 2018) considered Adolescent Pregnancy and held that complications during pregnancy and childbirth are the leading cause of death for 15 to 19 year-old girls globally. It has been held as under: -

“Key facts

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Adolescent mothers (ages 10 to 19 years) face higher risks of eclampsia, puerperal endometritis, and systemic infections than women aged 20 to 24 years, and babies born to adolescent mothers face higher risks of low birth-weight, preterm delivery, and severe neonatal conditions than those born to women aged 20 to 24 years (5).

Health consequences

Adolescent pregnancy remains a major contributor to maternal and child mortality, and to intergenerational cycles of ill-health and poverty. Pregnancy and childbirth complications are the leading cause of death among 15 to 19 year-old girls globally, with low and middle-income countries accounting for 99% of global maternal deaths

of women ages 15 to 49 years (4), (12).

xxx xxx xxx”

16. Reverting to the facts of the case in hand, it is quite vivid that pregnancy of the petitioner has crossed 26 weeks of gestational age and unless the judicial order directing termination is available, it may not be possible for the doctors even to proceed with termination of pregnancy.
17. Taking into consideration the entire facts including the age of the petitioner (14 years) and circumstances what have been stated by the victim, gestational age of the victim, judicial precedents, taking into consideration her adolescent pregnancy and risk involved in childbirth, medical condition of the victim, and that as per Explanation I appended to sub-section (2) of Section 3 of the Act of 1971 mental agony of a rape victim has to be treated as a case of grave injury, particularly taking into consideration that it is in the best interests of the victim alone which has to be kept in view and considering the provisions of Sections 3 and 4 of the Act of 1971 and Explanation I that the termination of pregnancy is immediately necessary to save the life of a pregnant girl like the petitioner, in the interest of justice, it would be proper to direct that a team of five doctors shall consider the feasibility of termination of pregnancy at this gestational age. Accordingly, the writ petition is allowed with following directions: -

1. The petitioner-Kumari Anjali Verma, aged about 14 years, to remain present at Dr. B.R. Ambedkar Government Medical College Hospital, Raipur on 17-7-2018 at 10 a.m. so that termination of pregnancy can be carried out on that day or on the next day by a team of doctors consisting of Dean, Medical

College; two senior gynecologists available in the hospital; one Radiologist; one Clinical Psychiatrist and one Anesthetist. The Dean of Dr. B.R. Ambedkar Government Medical College, Raipur is directed to make all such arrangements if the victim i.e. the petitioner and her father/mother give consent in the prescribed proforma under the Act of 1971 for termination of pregnancy and the rules made thereunder.

2. The termination of pregnancy of the petitioner will be supervised by the above-stated Medical Board who shall maintain complete record of the procedure which is to be performed on the petitioner for termination of her pregnancy.
 3. The petitioner will be allowed all medical and requisite facilities till she is medically fit even after the termination of pregnancy.
18. Name and details of the petitioner as mentioned in cause title and para 17(1) of this order shall not be disclosed and she shall be named as 'ABC'.
19. A copy of this order be sent to the Dean, Medical College, Raipur and Collector, Raipur directly by fax and e-mail by today itself and through Mr. Arun Sao, Deputy Advocate General, today itself so that he or she can make arrangements for termination of pregnancy of the petitioner well in advance.
20. No order as to cost(s).
21. Certified copy today to the parties.

Sd/-
(Sanjay K. Agrawal)
Judge