

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4010 OF 2018

. X
(through Legal Guardian
Mother) ..Petitioner

VERSUS

1. The State of Maharashtra
through Police Station Kinwat,
Tq. Kinwat, Dist. Nanded
2. The Dean,
Dr. Shankarrao Chavan Government
Medical College & Hospital,
Vishnpuri, Nanded,
Tq. and Dist. Nanded ..Respondents

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Mr.S.R. Bagal, Advocate for the petitioner.
Mr.S.S. Dande, Assistant Government Pleader for
Respondents.

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**CORAM : R.M.BORDE AND
K.K.SONAWANE, JJ.**

DATE: 27th April, 2018

ORAL JUDGMENT

(Per: R.M. Borde, J.)

1. Heard.
2. Rule. With the consent of the parties,
petition is taken-up for final decision at
admission stage.

3. This petition is presented on behalf of a minor girl by her guardian, seeking termination of pregnancy carried as a result of physical abuse allegedly committed by the accused against a wish of minor girl. The offences u/s 376(2)(1), 376(2)(n), 506 r/w 34 of the Indian Penal Code and u/s 5 of the Protection of Children from Sexual Offences Act (POCSO) have been registered against the accused. The pregnancy carried by minor girl is of around 20 weeks duration.

4. In view of Explanation-1 to Section 3 (2)(b) of the Medical Termination of Pregnancy Act, 1971, 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 pregnant woman. In view of Subsection (2) (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 the opinion framed in good faith that, continuance of pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health, a pregnancy may be terminated by a registered medical practitioner.

5. In the instant matter, since the pregnancy

carried by minor girl is as a result of offence of rape, it shall be presumed that it constitutes grave injury to mental health of the pregnant girl. The petitioner was referred for medical examination to the Board, constituted at Dr. Shankarrao Chavan Government Medical College & Hospital, Vishnupuri, Nanded. The petitioner was medically examined by the Medical Board, consisting of five expert Doctors. It is reported by the Medical Board that the gestational age is less than 20 weeks on clinical examination as well as sonography and as such, permission can be accorded for termination of pregnancy.

6. Considering the opinion expressed by the Medical Board, as well as on consideration of provisions of Section 3(2)(b), Explanation-1, the request made by the petitioner in the instant petition deserves to be allowed.

7. In this context, reliance can be placed on a Judgment delivered by this Court in Writ Petition No.9915 of 2017 decided on 10.08.2017.

8. Since according to the petitioner, the pregnancy carried by minor girl is as a result of offence of rape and the complaint has been lodged and the matter is under investigation, the Dean,

Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded, is directed to preserve tissue sample and blood sample of the foetus for carrying out medical tests including DNA, finger printing/mapping. The investigating officer conducting investigation in the matter shall ensure that the samples of tissues and blood etc. shall be forwarded to the Regional Forensic Laboratory, Aurangabad, for DNA, Finger Printing/mapping and for carrying the necessary tests and the samples and the report shall be preserved for the purpose of trial of the offence.

9. The petitioner is already admitted to the Dr.Shankarrao Chavan Government Medical College and Hospital, Vishnupuri, Nanded. The Dean of the aforesaid college is directed to forth with complete the procedure of termination of pregnancy of petitioner under the supervision of team of medical experts. Two members of the team shall be experts in Obstetrics and Gynecology.

10. Rule is accordingly made absolute. No costs.

(K.K.SONAWANE)
JUDGE

(R.M.BORDE)
JUDGE