

In the High Court for the States of Punjab and Haryana
at Chandigarh

CRM-M No.50061 of 2017 (O&M)

Date of Decision:-2.1.2018

Sabra

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Ms. Kamaldeep Kaur, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Gurvinder Singh Gill J.

By way of filing this petition, the petitioner seeks issuance of directions for termination of her 17 weeks pregnancy, resulting from her rape by respondents No.6 and 7 in connivance with respondent No.5 in respect of which FIR No.146 dated 9.11.2017 under Sections 506 and 120-B of Indian Penal Code, 1860, Section 6 of the POCSO Act and Section 25/54/59 of Arms Act was registered.

The learned counsel contends that after a few months of the incident when she came to know that she was pregnant, she moved an application through her father (Annexure P-3) on 20.11.2017 to M.S. Medical Officer, H.H.K.M. College, Nalhad, District Nuh for termination of pregnancy but no action was taken by the hospital authorities. The learned

counsel has submitted that since unwanted pregnancy of a minor unmarried girl would be extremely traumatic and humiliating for entire family therefore she wishes to get the same terminated. It has thus been prayed that appropriate directions be issued for termination of petitioner's pregnancy. The learned counsel cites 2017(4) RCR (Criminal) 49 - Tapasya Umesh Pisal vs. Union of India and Ors., wherein in a case of 24 weeks pregnancy, directions were issued for medical termination of pregnancy as the Medical Board had opined that the fetus, if allowed to born, would have a limited life span with serious handicaps.

On the other hand, the learned State counsel has pointed out that as of now, the pregnancy is more than 20 weeks old and in these circumstance termination of pregnancy at this stage would incur risk to the life of the petitioner. He has further pointed out that per the record collected during investigation, the date of birth of petitioner is 16.7.1995 and thus she is not a minor, being aged about 20 years.

I have considered the aforesaid submissions. Though in the petition it is mentioned that the pregnancy is 17 weeks old, but a perusal of the ultrasound report (Annexure P-2) shows that the pregnancy was reported to be 16 weeks and 4 days old as on 9.11.2017, which would mean that by now the pregnancy is more than 24 weeks old.

Section 3 of the Medical Termination of Pregnancy Act, 1971 (for short 'the Act'), which lays down the conditions under which a pregnancy may be medically terminated, reads as follows:-

“(1) Notwithstanding anything contained in the Indian Penal Code (45 of 860), 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 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 a pregnancy would involve such risk of injury to the health as is mentioned in sub section (2), account may be taken to 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 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.”*

A perusal of Section 3 shows that a medical pregnancy which is less than 12 weeks old may be terminated by a registered medical practitioner. However, when the pregnancy is between 12-20 weeks old, the same may be terminated after seeking opinion of a committee comprising of not less than two registered medical practitioners, who opine that continuance of the pregnancy would involve a risk to the life or to physical or mental health of the pregnant woman; or that there is a substantial risk that the child, if born, would suffer from some abnormalities.

Thus, as per the scheme of the Act, no pregnancy can be terminated, which is more than 20 weeks old. The only exception to the said rule is provided in Section 5 of the Act, which reads as follows:-

“Sections 3 and 4 when not to apply.-

- (1) *The provisions of Sec.4 and so much of the provisions of sub-section 2 of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the*

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 of the pregnant woman.

- (2) *Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified”*

As per the facts brought out in the petition, the present case *prima-facie* is not such, which would bring the same within the ambit of the exception provided in Section 5 of the Act. However, keeping in view the fact that it is a case of unwanted pregnancy due to rape, it would be appropriate that the petitioner be examined afresh by a committee comprising of at least two doctors including a Gynaecologist to be constituted by Civil Surgeon, Nuh, who shall examine the petitioner and opine as to whether there is any abnormality in the foetus or as to whether continuance of the pregnancy would entail danger to the life of the petitioner. In case any such circumstances exist, the committee shall take a decision to terminate the pregnancy provided same does not entail risk to the life of the petitioner other than the risks normally involved in such procedures/surgeries.

The petitioner along with his father shall appear before the Civil Surgeon, Nuh tomorrow itself. Since, it has been informed that the petitioner is a major, in case pregnancy is to be terminated, the consent of the daughter of the petitioner shall also be obtained. Further the foetus shall be preserved to enable DNA examination, if required at a later stage.

Before parting with the order, this Court is constrained to observe that there has been a callous attitude on part of the medical authorities at H.H.K.M. College, Nalhad, District Nuh as despite an application (Annexure P-3) submitted to the hospital authorities on 20.11.2017 by the petitioner for termination of her pregnancy, no action whatsoever was taken for termination of the pregnancy at that stage, despite the fact that specific directions have been issued by this Court on 2.8.2014 in CWP No.14058 of 2014. The Director Health Services, Haryana is directed to look into the matter and get an inquiry conducted and to take appropriate action against the delinquent officials/doctors.

A copy of this order be furnished to the learned State counsel and also to counsel for petitioner under the signatures of the Court Secretary today itself, so that the necessary action is taken at the earliest.

The petition stands disposed of.

2.1.2018
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No