

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21291 of 2018

Date of decision: August 28, 2018

Sikander

...Petitioner

Versus

The State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Balraj Gujjar, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

Rakesh Kumar Jain, J. (Oral)

The petitioner is the father of a 14 year girl, who was allegedly raped by her *Fufa* on 1.5.2018. FIR No.68 dated 7.8.2018 under Section 6 of POCSO Act, 2012 and Sections 376(3) and 506 IPC at Women Police Station, Bhiwani was registered against the said accused. It is averred in the petition that the daughter of the petitioner was initially examined on 8.8.2018 at Civil Hospital Bhiwani. She was found pregnant and referred to the PGIMS Rohtak. The Doctor, who had attended her, declared that she is having 28 weeks of pregnancy and refused to terminate the pregnancy while referring to Medical Termination of Pregnancy Act, 1971 (for short 'the Act') on the ground that if the pregnancy is of more than 20 weeks then it cannot be terminated without the order of the Court. The petitioner has thus approached this Court for seeking a direction to respondent No.2 i.e.

Director, Pt.B.D.Sharma, PGIMS Rohtak and then Chief Medical Officer,

Civil Hospital, Bhiwani to terminate the pregnancy of his daughter which has been caused because of rape by his brother-in-law. On 24.8.2018, this Court had passed the following order:-

“The petitioner is a father of a girl aged 14 years, who is stated to have been raped by her uncle (*Fufa*) on account of which an FIR No. 68 dated 07.08.2018 was registered under Section 6 of the POSCO Act, 2012 and Under Sections 376 (3), 506 of IPC at Women Police Station, Bhiwani. After the registration of the aforesaid FIR, the accused has been arrested. The petitioner was purportedly medico-legally examined and it was found that she is having pregnancy. There is a document attached with the petition of the Gynaecologist of the PGIMS Rohtak in which it was observed that the daughter of the petitioner is seven months’ pregnant but the pregnancy cannot be terminated without the order of the Court.

Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as ‘the Act’) provides that a pregnancy may be terminated by a registered medical practitioner where the length of the pregnancy does not exceed twelve weeks or where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, then opinion has to be obtained from the two registered medical practitioners as to whether it would be in the interest of the pregnant person to terminate the pregnancy or there would be a risk to the life of the pregnant woman or it may cause grave injury physical or mental health or that the child to be born would suffer such physical or mental abnormalities as to be seriously handicapped.

Learned counsel for the petitioners submits that there was no earlier occasion for seeking termination of the pregnancy as the petitioner’s daughter has disclosed about the misdeed of her uncle (*Fufa*) only in the month of August 2018 on account of which an FIR was registered against him.

Learned counsel for the petitioner has prayed that this Court may obtain an opinion from the Pt. B.D. Sharma, PGIMS, Rohtak about the possibility of termination of the pregnancy of the petitioner’s daughter without causing any harm to her health both physical and mental and in case it is possible then appropriate order may be passed.

In view of the provision of Section 3 of the Act, Director, Pt. B.D. Sharma, PGIMS, Rohtak is directed to constitute a Board of Gynecologists (three in number), headed by the Head of the Department, who would examine the daughter of the petitioner for the purpose of opining as to

whether it would be conducive to terminate the pregnancy at this stage when it is stated that she is seven months' pregnant.

The petitioner is directed to appear before the Director, Pt. B.D. Sharma, PGIMS, Rohtak tomorrow i.e. 25.08.2018 at 11.00 a.m. with the order of this Court. The Director is requested to make the arrangements with regard to the examination of the petitioner's daughter tomorrow i.e. 25.08.2018 itself and submit the report before this Court on Monday i.e. 27.08.2018 so that time may not be wasted in case there is any possibility of termination of pregnancy.

Notice of motion.

Mr. Rahul Mohan, DAG, Haryana accepts notice on behalf of the respondent-State. He is directed to inform the Director, Pt. B.D. Sharma, PGIMS, Rohtak about this order passed by this Court which shall be sent by him through e-mail also.

Adjourned to 27.08.2018.

To be shown in the urgent list.

Dasti.

Registry of this Court is also directed to send a copy of this order to the Director, Pt. B.D. Sharma, PGIMS, Rohtak, through e-mail etc. for compliance."

In pursuance of the aforesaid, the Medical Board headed by the Senior Professor & Head, Obst. and Gynae Department, made an opinion, which is recorded in the order dated 27.8.2018, which is also reproduced as under:

"After taking the thorough history and conducting medical examination, the undersigned board is of the opinion that the patient named – Khushi d/o Sh. Sikander, R/o Valmiki Nagar, Hanuman Gate, Bhiwani, District Bhiwani, is having pregnancy of 25-26 weeks + 2 weeks duration and on considering the duration of pregnancy, termination of pregnancy in this case at this stage would be in contravention with the legal provisions of Medical Termination of Pregnancy Act, 1971 and as such presently there is no risk/imminent danger to her life."

Since the opinion was not categoric, therefore, the Court requested the Board to give specific opinion as to whether the pregnancy of the daughter of the petitioner can be terminated without causing any loss to his life etc. The Director, PGIMS Rohtak has sent the latest opinion dated

28.8.2018 in which it is observed as under:

“As per MTP Act, 1971, the MTP can only be carried out upto 20 weeks of pregnancy. The Board is of the opinion that since this girl is having pregnancy of 25-26 weeks+2 weeks duration; the termination cannot be carried out as per MTP Act. In case it is terminated, there could be grave risk to the life of the girl.”

Counsel for the petitioner has still insisted that pregnancy of the petitioner may be terminated knowing fully well about the opinion of the Board that it would cause grave risk to the life of the pregnant girl.

I have heard learned counsel for the parties and perused the record carefully with their assistance.

Section 2(c) of the Act defines "minor" which means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority. The daughter of the petitioner is admittedly 14 years of age. She is thus a minor.

Section 3 deals with the provisions whereas pregnancy can be terminated by the Medical Practitioner.

Section 3(2) of the Act provides that where the length of the pregnancy does not exceed twelve weeks, then registered medical practitioner can terminate the pregnancy; where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, then opinion has to be taken from atleast two registered medical practitioners 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.

Section 3(3) of the Act says that 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.

Section 3(4) of the Act says that 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.

The petitioner, who is the father of the girl in question has desired to get the pregnancy terminated and his counsel has submitted that he is ready and willing to give in writing his consent but the Court has to look into the facts about the well-being of the minor girl as to whether she is in a position to withstand the termination of the pregnancy when she is having foetus of seven months. In this regard, only guiding feature for the purpose of determination of the Court is the opinion of the experts. On the safer side, the Court has requested the Director, PGIMS Rohtak to constitute a Board of Doctors with the Chairman being the Head of the department of Gyanecology, who has given opinion on 28.8.2018 that in case the pregnancy is terminated then there would be a grave risk to the life of the girl. In such circumstances, it is not advisable to terminate the pregnancy of the daughter of the petitioner in order to ensure her safety at this stage.

Counsel for the petitioner has referred to the decision of this Court in the case of ***Shewata (minor) daughter of Sh.Rudarpal Vs. State of Haryana and others 2015(4) RCR(Criminal) 423*** in which this Court has rejected the request of the father of the girl, who was also raped, for the purpose of termination of pregnancy on the advise of the medical board but the Court had issued certain directions for ensuring the well-being of the said girl. Accordingly, in this case also, keeping in view the opinion of the Board of doctors, I am not inclined to grant permission for the purpose of termination of pregnancy but direction is issued to the Director, PGIMS Rohtak to admit the daughter of the petitioner as an indoor patient as and

when the need in this regard arises.

- (2) The Director, PGIMS Rophtak shall provide private room to the daughter of the petitioner so that she could be well attended by her family member(s).
- (3) Daughter of the petitioner would be provided requisite medicines, food, clothing and other facilities as are required well in advance and shall be attended by the Head of the Department of Obstetrics and Gynaecology who will personally monitor such requirements at the time of delivery of the girl.
- (4) The Medical Superintendent of the PGIMS shall be obligated to ensure meticulous compliance of every advice, recommendation, suggestion or order in this regard made to him/her by the Professor and Head of the Department to Obstetrics and Gynaecology Department;
- (5) The Professor and Head of the Department to Obstetrics and Gynaecology of PGIMS would further supervise the periodical needs of the girl like psychiatric consultation or related assistance from other departments of PGIMS which shall also be provided timely;
- (6) The Authorities of Medical College shall ensure adequate privacy to the daughter of the petitioner while she would be an indoor patient and the identity of the girl shall not be disclosed and shall also not be exposed to the public and media.
- (7) The Chief Secretary of the State of Haryana, Principal Secretary, Department of Health and all other concerned departments of State of Haryana are directed to ensure the reimbursement of bills or expenditure incurred by the petitioner on the delivery of his daughter immediately on the submission of the bills.

The petitioner is otherwise always at liberty to approach this Court for any other direction, if need arises.

With these directions, the present petition is disposed of but before parting I would place on record my appreciation to the authorities of

PGIMS Rohtak and the members of the Medical Board who have wasted no time in complying with the request made by this Court and examined the daughter of the petitioner immediately and produced the report without wasting any time enabling the Court to dispose of the case at the earliest to give appropriate relief to the petitioner and his daughter. A copy of this order be also sent to the Director, PGIMS, Rohtak and the Chairman/Chairperson of the Medical Board.

August 28, 2018
Meenu

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned : Yes/No
Whether reportable : Yes/No