

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2641 of 2019**

1. Vijay Chandrawanshi S/o Nathuni Chandrawanshi Aged About 53 Years Occupation Auto Driver, R/o Village Near Collage Post Thana Dipika, District Korba Chhattisgarh.,
2. Ku. Sonali Chandrawanshi D/o Vijay Chandrawanshi Aged About 15 Years through Her Father I.E. Petitioner, Occupation Auto Driver, R/o Village Near Collage Post Thana Dipika, District Korba Chhattisgarh. **--- Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Department of Home Affairs (Police), New Raipur, Tahsil And District Raipur : Raipur, Chhattisgarh
2. The Superintendent of Police District Korba, Chhattisgarh
3. The Station House Officer Police Civil Lines Bilaspur Tahsil Bilaspur, District : Bilaspur, Chhattisgarh **--- Respondents**

For petitioner	:	Mr. Neelkanth Malviya, Advocate
For the State/Respondents	:	Mrs. Richa Shukla, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri**CAV Judgement****21.08.2019**

Heard.

1. The present petition has been moved for termination of pregnancy of petitioner No.2 who is said to be a minor of aged about 15 years and is represented through her father petitioner No.1.
2. The facts of the case are that petitioner No.2 was kidnapped from lawful guardianship of her parents on 20.06.2018 while she was minor as her date of birth according to the school certificate is 25.5.2003. The missing report was lodged at Police Station Deepika on 21.06.2018 and the offence u/s 363 of IPC was registered and subsequently she was recovered on 31.05.2019 from village Parna, Distt. Kishtwad, Jammu and Kashmir and thereafter she was sent to Child Welfare Committee, Korba

from-where she was subsequently handed over to her parents. On 30.06.2016 when the medical examination was conducted, it came to fore that she is carrying pregnancy. Thereafter, they approached District Hospital Korba for termination of pregnancy.

3. Learned counsel for the petitioner would submit that the petitioner no.2 being minor was subject of rape, therefore, she cannot be compelled to give birth to a child which was due to rape, as such, the termination of pregnancy may be ordered. He placed reliance on case laws reported in **(2009) 9 SCC 1 – Suchitra Srivastava vs. Chandigarh Administration and in (2017) 3 SCC 800 Independent Thought v. Union of India** and would submit that if the girl is minor then in such a case, the provisions of Protection of Children from Sexual Offences Act (POCSO) would be applicable. He also relied on case law reported in **(2018) 11 SCC 572 – Z v. State of Bihar** and would submit that when the child is a victim of a rape then in such a case, the pregnancy needs to be terminated as otherwise it would cause mental injury.

4. Per contra, learned State Counsel opposes the argument and would submit that as per the medical report of the doctors, the pregnancy is more than 20 weeks and the medical report would show that since the pregnancy is more than 22 weeks, any termination of pregnancy would prove fatal to the life of girl, therefore, the prayer of the petitioners may not be allowed.

5. Heard learned counsel for the parties and also perused the records.

6. The Supreme Court in the case of **Meera Santosh Pal & others Versus Union of India and others {(2017) 3 SCC 462}** has reiterated the view taken in the case of **Suchita Srivastava Vs. Chandigarh Admn {(2009) 9 SCC 1}** and has observed thus in para 9, which is reproduced hereunder:-

“9. In *Suchita Srivastava v. Chandigarh Admn* {(2009) 9 SCC 1} a Bench of three Judges held “a woman’s right to make reproductive

choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution". The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court observed as follows :-

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children"

7. Reading of section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act of 1971') makes it clear that where length of pregnancy does not exceed 20 weeks and not less than two registered medical practitioners have formed an opinion in good faith that the continuance of pregnancy would involve a risk to the life of pregnant woman or grave injury to her physical or mental health, the pregnancy can be terminated by a registered medical practitioner. This act of medical practitioner, if aforesaid conditions are satisfied, will not attract the penal provisions mentioned in Indian Penal Code. In other words, such registered medical practitioner shall not be guilty of any offence under the IPC or under any other law for the time being in force if conditions mentioned in Section 3 or Section 5 of the Act are satisfied.

8. Explanation 1 of the Act of 1971 purports that when 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. Sub section 4(a) of section 3 further contemplates that no pregnancy of a woman, who has not attained the age of eighteen years, for termination of the pregnancy consent has to

be obtained in writing from her guardian.

9. The instant petition has been preferred by the father being natural guardian and the victim has also been made as Petitioner no.2. The report which is called from a team of two medical practitioners of Indira Gandhi District Hospital Korba shows that the patient is fit to undergo surgical intervention but it is stated that since the pregnancy is more than 20 weeks, during such termination of pregnancy she may lead to severe bleeding and it may prove to be fatal to the life.

10. Sub section 2 of Section 3 of the Act of 1971 puts a rider, normally the pregnancy could not be terminated when it exceeds 20 weeks, unless continuance of the pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health. The Medical report in this case shows that there would be a risk of life of the pregnant woman if termination is done. Since allegation of rape has been made whether it constitute a grave injury to the mental health of pregnant woman as has been defined in sub section 2 of Section 3 of the Act of 1971 the guiding parameters are to be seen.

11. The expression grave injury to mental health which is used by the legislature cannot be put into a straight jacket formula. Sub section 2 of Section 3 of the Act of 1971 further makes reference of not only physical injury but also mental injury. When the termination has been sought after 20 weeks, necessarily the background has to be travelled which leads the court to look to the case diary of the criminal case of Crime No.110/2018 of Police Station Deepika, Korba.

12. The statement of the girl recorded u/s 164 of Cr.P.C., would show that she has made a statement that she has performed marriage with the boy at Durga Manidr in Jammu and Kashmir and no force or coercion was ever applied. She has stated in her statement that she is aged about 17 years. The radiological report shows that the age of the girl is 17-19 years

with plus (+) or minus (-) 2 years on either side. The Statement recorded before Child Welfare Committee Korba also supports the same. The question of age and the consent of *mens-rea* are to be adjudicated in criminal trial and further by this Court also in case of any appeal. The statutory limit for terminating the pregnancy is for 20 weeks and the report of the doctors in this case shows that she carries pregnancy of 22 weeks. The petition has been filed on 27.07.2019 and before that, the consent to carry pregnancy has continued. The report also shows that performance of abortion at a late stage would prove fatal to the physical health of the victim. The statement of the victim in criminal case would show that she was conscious enough in maintaining the relation as she stayed with the accused for a considerable time. Therefore, in the facts and circumstances of the case, this Court is not inclined to accede to the request made by the petitioners for abortion by terminating the pregnancy.

13. In view of the foregoing reasons, I am not inclined to allow this petition. Accordingly, it is dismissed.

**Sd/-
(Goutam Bhaduri)
Judge**