

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2981 of 2019**

Parvati Korwa D/o Chhingalu Ram Korwa Aged About 20 Years R/o
Village - Barpali, Police Station - Shyang, Korba, District - Korba
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home Affairs (Police), Mantralay, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District - Raipur Chhattisgarh.
2. The Secretary, Ministry Of Public Health And Welfare, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District - Raipur Chhattisgarh.
3. The Chief Medical Officer / Medical Board Of District Hospital , Korba, District Korba Chhattisgarh.
4. The Head Of The Department , Gyanaecology Department, District - Hospital - Korba, District - Korba Chhattisgarh.
5. The Station House Officer, Police Station - A. J. K. Korba, District - Korba Chhattisgarh

--- Respondents

For petitioner – Shri Dharmesh Shrivastava Advocate.
For State- Smt. Richa Shukla, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order**

06/09/2019

Heard.

1. Instant petition is preferred seeking termination of pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971.
2. Learned counsel for the petitioner 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 petitioner is a victim of a rape then in such a case, the pregnancy needs to be terminated as otherwise it would cause mental injury.

3. Petitioner was also directed to appear in person so that government counsel may seek instruction as to whether she is able to understand the subject matter of this petition for which it is filed.

4. Smt. Richa Shukla, Dy.G.A. on due enquiry would submit that the petitioner has confirmed that she want to get the pregnancy terminated. It is contended that the petitioner was subjected to rape, she was allured by the accused, who on the pretext of marriage committed repeated sexual intercourse on her and subsequently refused to marry her. Because of such sexual intercourse she suffered pregnancy. It is stated that the pregnancy is about 18 weeks and the petitioner do not want to give birth to the child which is outcome of rape.

5. Learned State counsel would submit that as per the direction given by this court the certificate given by the medical board has been procured. Report of the medical board has been placed initially which was filed on 4/09/2019. Subsequent medical report which was called for is of 5/09/2019, reading of both the report shows that she is medically fit for termination. It is stated that pregnancy is around 19 weeks.

6. Heard learned counsel for the parties.

7. 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."

8. 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.

9. 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.

10. Instant petition has been preferred by the petitioner herself. The case diary statement which was called for inspection shows that report has been made that she was subjected to rape as she was allured by the accused on the pretext of marriage and thereafter the accused refused to

marry her which lead to filing of the report. Consequently, the accused is also under arrest.

11. Certificate issued by the medical board and civil surgeon would show that in medical report it is stated that she is medically fit to undergo termination of pregnancy. In the instant case medical report shows that pregnancy is about 18 weeks as report was given on 31/08/2019, naturally therefore one week may be added meaning thereby she is carrying 19 weeks pregnancy. No risk has been shown in the medical certificate if pregnancy is terminated. Case diary statement also shows that the victim was subjected to rape by the accused on the pretext of marriage. Considering the medical report as also term of the pregnancy which has not exceeded 20 weeks, termination of pregnancy is approved. Petitioner shall be admitted to the District Hospital, Korba wherein the Superintendent shall depute two registered medical practitioners i.e. two senior Doctors to cause termination of pregnancy by obtaining her consent. The DNA sample of the fetus shall also be taken for further evidence as criminal case against the accused is pending.

12. In the result, the writ petition is allowed to the above-stated terms.

Sd/-

(Goutam Bhaduri)

JUDGE