

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3486 of 2019**

1. Ms. A D/o - Shri Iqbal Ahmed Khan Aged About 17 Years R/o - Ward No. 26, Clubpara Near Durga Mandir, P.S. - Mahasamund, Tehsil And District - Mahasamund Chhattisgarh. Since Minor Through Her Natural Guardian Mother - Smt. Nurun Nisha Khan, W/o Shri Iqbal Ahmed Khan, Aged About 45 Years, R/o- Ward No. 26, Clubpara Near Durga Mandir P.S. - Mahasamund, Tehsil And District - Mahasamund Chhattisgarh
2. Smt. Nurun Nisha Khan W/o Shri Iqbal Ahmed Khan Aged About 45 Years R/o - Ward No. 26, Clubpara Near Durga Mandir, P.S. - Mahasamund Tehsil And District Mahasamund Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan Naya Raipur Chhattisgarh
2. The Chief Medical Officer, (C.M.O.)/ Medical Board Of District Hospital, Mahasamund Chhattisgarh
3. Head Officer Of Department Gyanaecologist (H.O.D.) - Gynaic, District Hospital, Mahasamund, Chhattisgarh
4. Collector Mahasamund, District - Mahasamund Chhattisgarh

---- Respondents

For Petitioners : Ms. Aditi Singhvi, Advocate

For Respondents/State : Shri Rahul Jha, GA

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****01/10/2019**

Heard.

1. Instant petition is preferred seeking termination of pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971 (for short 'the Act,

1971').

2. Learned counsel for the petitioners would submit that the petitioner No.1 is a victim of rape and she underwent the offence like woman trafficking and was subjected to rape. Learned counsel for the petitioners 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. She also relied on case law reported in **(2018) 11 SCC 572 – Z v. State of Bihar** and would submit that when the petitioner No.1 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. The instant petition was filed on 25.09.2019 and came before the Board on 26.09.2019 on mentioning. On 26.09.2019 a direction was given to the State to get the victim examined by the Medical Board in terms of the Act, 1971. Today the report has been filed. The report placed by the State shows that the victim was examined by a medical team of four members at District Medical Board, Mahasamund. The pregnancy has been reported of 21 weeks. It is also stated that she is physically fit. The certificate of the medical board categorically stated that she is found fit for the Medical Termination of Pregnancy (MTP), at the same time, the statement made in a criminal case in Crime No.370/19 under Sections 370 (A), 372, 373, 376 IPC read with Section 6 of the Protection of Children from Sexual Offences Act is perused. The record would show that the FIR was registered on 15.09.2019. The statement of the victim was also been recorded under Section 161 & 164 Cr.P.C. Prima facie, the reading of the said statement in the criminal case points out that the allegation of rape has

been attributed. The Explanation 1 of Section 3 of the Act of 1971 purports that 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.

4. 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.”

5. Section 5 of the Act, 1971 purports that provisions of Section 4 and sub-section (2) of Section 3 of the Act, 1971 wherein certain restrictions have been imposed which relates to the length of the pregnancy, shall not apply to the termination of a pregnancy when the opinion of the registered medical practitioner for termination of pregnancy is on the good faith that such termination of pregnancy is necessary to save the life of the pregnant woman. In case of a rape, if the

woman is forced to carry on the pregnancy, then in such case, it would eventually lead to social death of a woman as the stigma cannot be attached to continue her for entire life.

6. The statement of the victim would show that she was subjected to rape. The petitioner No. 1 herein is a minor represented through her mother. The report of the doctors further shows that there is no risk if the termination of pregnancy is caused and it is stated that she is fit to undergo M.T.P. Under the circumstances, taking into this fact that the petitioner No.1 was subjected to rape thereby the pregnancy occurred, the prayer to terminate the pregnancy is allowed, specially taking into the medical report of the petitioner No.1 is approved. The petitioner No.1 shall be admitted to the District Hospital, Mahasamund wherein by the team of doctors in the supervision of medical expert, the termination of pregnancy shall be caused. The DNA sample of the fetus shall also be taken for further evidence as criminal case against the accused is pending.
7. In the result, the writ petition is allowed to the above-stated terms

Sd/-

Goutam Bhaduri
Judge