

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6613 OF 2019

- | | | |
|---------------------------------|---|---------------|
| 1. 'X' |] | |
| Age 14, |] | |
| Since minor, through her father |] | |
| and natural legal guardian |] | |
| Samarjit Pal, Cutting No.10, |] | |
| Kurar Village, Gandhi Nagar, |] | |
| Malad (East), Mumbai – 400097. |] | .. Petitioner |

Versus

- | | | |
|---|---|----------------|
| 1. Union of India |] | |
| through the Secretary, |] | |
| Ministry of Law and Justice, |] | |
| Shastri Bhawan, |] | |
| "C" Wing, New Delhi 110001 |] | |
| 2. State of Maharashtra |] | |
| Through the Principal Secretary, |] | |
| Public Health Services, |] | |
| Mantralaya, Mumbai 23. |] | |
| 3. Ministry of Health and Family Welfare, |] | |
| through its Secretary, |] | |
| M.H. Division, New Delhi |] | .. Respondents |

Ms. Meenaz Kakalia I/b Ms. Neha Philip for petitioner.

Ms.P.N. Diwan, AGP for respondent No.2.

**CORAM : R. M. BORDE &
N.J. JAMADAR, JJ.**

DATE : 13TH JUNE 2019

ORAL JUDGMENT (PER R.M. BORDE, J.)

1. Rule. Rule is made returnable forthwith and with the consent of the

learned counsels for parties, taken up for final hearing.

2. The petitioner, who is a minor girl, a victim of physical abuse, has approached this Court seeking permission for terminating the pregnancy carried by her which is stated to be of about 24 weeks duration. The mother of the victim has lodged the First Information Report with Kurar Police Station, Malad, Mumbai in respect of commission of offence punishable under Sections 376(3), 506 of the Indian Penal Code, 1860 and Sections 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. In terms of the order passed by us on June 10, 2019, the petitioner was directed to be examined by the Medical Board constituted by Sir J.J. Group of Hospitals and Grant Medical College, Mumbai. The Medical Board consists of Professors and Head of Department of Obstetrics and Gynecology, Professor and Head of the Department of Psychiatry, Professor of Radiology, the Professor and Head of the Department of Cardiology and the Professor and Head of Department of Neurology.

4. The Professor and Head of Department of Psychiatry has reported that the victim is not suffering from any mental illness. However, the alleged pregnancy is caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health. It is

further reported that the victim is fit to undergo the procedure of MTP from psychiatric point of view.

The Professor and Head of the Department of Cardiology reported that there does not appear any abnormality in heart and the heart is compatible for fetal and extra-uterine life. However, there are multiple birth anomalies which require further investigation and attention and termination can be done.

5. The Committee has unanimously reported that continuation of pregnancy in minor may lead to pregnancy related complications like anemia, pregnancy induced hypertension as well as complications during labour. The girl is also undergoing psychological impact with uncertain future. The victim is also suffering from a psychological problem. Since it is further reported that since pregnancy has advanced to 24 weeks, well beyond legal limit of termination of pregnancy, i.e., 20 weeks, the termination can only be done with the due permission from the High Court. The Committee has reported that the continuation of pregnancy will have physical and mental stress to minor-mother. Hence it is advisable to terminate the pregnancy.

6. In the instant matter, termination of pregnancy is necessary to safeguard the mental health of the pregnant woman, who is a minor. A

Division Bench of this Court in the case of *Shaikh Ayesha Khatoon Vs. Union of India and Others*¹ has held that the contingencies prescribed in Section 3(2)(i) & (ii) of the Medical Termination of Pregnancy Act, 1971 (The MTP Act, 1971) shall have to be read while interpreting Section 5 of the MTP Act, 1971 and the ground referred to in the aforesaid provisions are inherent and shall be read in Section 5 of the MTP Act, 1971. The explanation to Section 3 of the MTP Act, 1971 prescribes 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.

7. The pregnant minor girl is a victim of physical abuse and as such she has a choice and her decision to terminate the pregnancy is required to be taken into account. The freedom to make choice by the woman which is an integral part of personal liberty cannot be taken away. It shall also be taken into consideration that besides physical injury, the legislature has widened the scope of the termination of pregnancy by including "injury" to mental health of the pregnant woman also, to be a valid ground. In the instant matter, though pregnancy is alleged to be a result of physical abuse, the choice of victim of rape of terminating unwanted pregnancy needs to be respected. The Medical Board, after examination of the victim, has

¹ 2018 3 Bom.C.R.399

reported that in the circumstances, it would be desirable to accord permission to the pregnant minor girl to terminate the pregnancy.

8. The learned counsel for the petitioner claims that the petitioner would like to carry out the procedure to terminate the pregnancy at Sir J.J. Group of Hospitals and Grant Medical College, Mumbai. The Dean of the Medical College, is directed to carry the procedure to terminate the pregnancy under the supervision of team of medical experts which shall include expert Gynecologist and Obstetrician, Psychiatrist and Paediatrician.

9. Since the pregnancy carried by the victim minor girl is as a result of physical abuse and the First Information Report has already been lodged, it would be appropriate to direct the Dean of the Medical College to preserve the tissue sample and blood sample of the foetus for carrying out necessary medical tests including DNA, finger printing/mapping. The Investigating Officer conducting investigation in the matter shall ensure that the samples of tissues and blood etc. shall be forwarded to the Regional Forensic Laboratory, Aurangabad for DNA, Finger printing/mapping and for carrying necessary tests and the samples and report shall be preserved for the purpose of trial of the offence.

10. We direct that if despite attempts at medical termination of

pregnancy, the child is born alive, then, first and foremost, the registered medical practitioner and the hospital/ clinic concerned will have to assume the full responsibility to ensure that such child is offered the best medical treatment available in the circumstances.

11. We further direct that if the child is born alive, and if the mother and relatives of the child are not willing to take or are not in a position to the responsibility for such child, then, the State and its agencies will have to assume full responsibility for such child and offer such child medical support and facilities, as may be reasonably feasible, adhering always to the principle of best interests of such child as well as the Statutory provisions in the Juvenile Justice Act.

12. Rule is made absolute in above terms. In the circumstances, there shall be no order as to costs.

13. All concerned to act on an authenticated copy of this judgment.

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]