

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

WRIT PETITION NO. 8246 OF 2019

Amod Laxmi Chaudhary]
of Bombay, Age 44 years, Occ.- Service,]
Room No. 117, Plot-68, New Collector]
Compound, Near Rose Mary School,]
Malwani Gate, Malad West,]
Mumbai – 400 095].. Petitioner

Vs.

1. State of Maharashtra, through]
Inspector In-charge, Malvani Police]
Station to be served through Public]
Prosecutor, High Court, (A.S.), Mumbai]
]]
2. The Secretary,]
Health Department,]
Mantralaya, Mumbai – 400 032].. Respondents

Mr. Shashikant D. Chandak a/w. Ms.Kanchan S. Chandak and Mr.Deepam R. Morzaria for petitioner.

Mr.Y.S. Khochare, AGP a/w. Mr.A.P. Vanarase, AGP for State.

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

DATE : 26TH JULY 2019

JUDGMENT (PER N.J. JAMADAR, J.) :

1 Rule. Rule made returnable forthwith and heard finally at the stage of admission.

2 The petitioner, father of a minor girl, has approached this Court seeking direction to the authorities of the State to terminate the pregnancy,

which his minor daughter carries, since the said pregnancy had occurred on account of rape committed upon her. The claim of the petitioner that the minor daughter had been subjected to sexual abuse resulting in pregnancy, is sought to be supported by placing on record a copy of the First Information Report lodged by the victim on 13th July 2019, leading to registration of a crime for the offences punishable under Sections 417, 376 and 506 of the Indian Penal Code, 1860 and Sections 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') vide C.R. No. 566 of 2019. The petitioner had also placed on record the reports of the medical examination indicating that the victim was carrying a pregnancy of more than 20 weeks.

3 In the backdrop of the aforesaid assertions and material on record, by order dated 23rd July 2019, we had directed the Dean, Sir J.J. Group of Hospitals and Grant Medical College, Mumbai to constitute a Medical Board considering of experts to examine the victim and submit report to this Court.

4 In pursuance of the aforesaid directions, the victim was examined by a Medical Board consisting of the Professor and Head of Department of Obstetrics and Gynecology, Professor and Head of Department of Psychiatry, Professor and Head of Department of Radiology, Professor and

Head of Department of Paediatrics, Professor and Head of Department of Cardiology and Professor and Head of Department of Neurosurgery. It is reported that the victim is carrying a pregnancy of gestational age of more than 22 weeks. The Committee has noted that the victim has alleged that the pregnancy is caused by rape. The Committee has, thus, opined as under :-

“After going through ultrasonography report of Sir J.J. Group of Hospitals, Mumbai and opinions of Head of Departments of Obstetrics and Gynecology, Psychiatry, Neurosurgery and Paediatrics, the Committee feels that, since the pregnancy is already more than 22 weeks which is more than 20 weeks cut off as per Medical Termination of Pregnancy Act, there is no medical reason to terminate the pregnancy.

As per Psychiatric evaluation by Head of Department of Psychiatry, pregnancy is caused by rape & she is a minor. Thus, the anguish caused by such pregnancy is presumed to constitute a grave injury to her mental health. Therefore, termination of pregnancy is recommended.

The woman is explained about the outcome in the language she best understands.”

5 In view of the provisions contained in Section 3(2) of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the Act, 1971), a pregnancy may be terminated, if two registered medical practitioners form an opinion, in good faith, that 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. Explanation I to Sub-section (2) of Section 3 further provides 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.

6 In the case at hand, the petitioner has placed on record adequate material to demonstrate that the minor victim has been subjected to sexual abuse and the pregnancy has occurred on account of the rape, allegedly committed by the accused named in the First Information Report, lodged by the victim. The case, thus, clearly falls within the ambit of sub-clause (i) of clause (b) of sub-section (2) of Section 3 of the Act, 1971. The minor victim deserves to be relieved of the trauma and mental anguish caused to her on account of the pregnancy which has occurred due to rape.

7 A Division Bench of this Court in “*X*” (*since minor though her mother*) *Vs. The Union of India & Ors.*¹ had directed the termination of the pregnancy which had occurred on account of physical abuse. In the said case, this Court had also directed the authorities of the hospital and the investigating officer to take steps to preserve tissue sample and blood sample of the foetus for effective investigation and prosecution. In the case of *XYZ Vs. Union of India & Ors.*², another Division Bench of this Court had issued directions, *inter-alia*, pointing out the responsibilities of the authorities of the State, in the event this Court permits the medical

1 Writ Petition No. 14173 of 2017 dt. 12-12-2017 (Aurangabad Bench)

2 Writ Petition No. 10835 of 2018 dt. 3-01-2019

termination of pregnancy and the child is born alive.

8 Since the gestational age of the pregnancy carried by the minor victim is of more than 22 weeks, there is a possibility that the child may be born alive. It would, therefore, be necessary to pass certain orders so as to ensure that the child, if born alive, is attended to medically, and is also taken care of, if the victim does not desire or is not in a position to take care of the child. As the criminal law is set in motion, it may also be necessary to direct the authorities to preserve the tissue/blood sample for facilitating the investigation.

9 In view of above, the petition deserves to be allowed. The victim deserves to be permitted to terminate the pregnancy. The petitioner has expressed a desire that the victim may be permitted to terminate the pregnancy at Sir J.J. Group of Hospitals and Grant Medical College, Mumbai. The petitioner undertakes to take the victim to the said hospital tomorrow, i.e., 27th July 2019.

10 Resultantly, the petition stands allowed in the following terms :

- (i) The Dean, Sir J.J. Group of Hospitals and Grant Medical College, Mumbai is directed to complete the procedure of termination of pregnancy carried by the victim under the

supervision of a team of medical experts, including expert in the field of obstetrics, gynecology and pediatrics.

(ii) In the event, the child is born alive, then the hospital will have to assume full responsibility to ensure that the child is offered best medical treatment available in the circumstances, in order that it develops into a healthy child.

(iii) In the event, the child is born alive and the parent is not willing to or not in a position to assume the responsibility of 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.

(iv) The Dean, Sir J.J. Group of Hospitals and Grant Medical College, Mumbai is further directed to preserve 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 sample of tissues and blood etc. shall be forwarded to the Regional

Forensic Laboratory for DNA, Finger printing/mapping and for carrying necessary tests and the sample and report shall be preserved for the purpose of trial.

11 Rule is accordingly made absolute in the aforesaid terms.

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]