

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-11098-2019 (O&M)
Date of Decision:14.05.2019**

Ramesh

... Petitioner

Versus

State of Haryana & others

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Anil Kumar Malik, Advocate for the petitioner.

Mr. Siddharth Sanwaria, DAG, Haryana.

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TEJINDER SINGH DHINDSA, J. (ORAL)

Instant writ petition has been filed seeking a mandamus for issuance of directions to respondent No.5 i.e. the C.M.O., Panipat, District Panipat to terminate an unwanted pregnancy of a victim of rape who happens to be a minor. The petition has been filed on behalf of the minor (name not being disclosed) through her father and natural guardian, namely, Ramesh S/o Bhola Ram.

Counsel for the petitioner has been heard.

Brief facts that may be noticed are that FIR No.59, dated 22.03.2019 stands registered under Section 4 of the POCSO Act as also under Section 506 IPC at Police Station Women, Panipat on the complaint of father that her daughter whose date of birth was 25.12.2003 has been physically assaulted and sexually abused by one Deepak.

Learned State counsel upon instructions from SI Gayatri Devi apprises the Court that the investigation in the matter stands concluded and even the challan has been presented before the competent Court on

06.05.2019.

It has been urged by counsel that continuation of the pregnancy would involve a risk to the life of the minor and it may also be socially and mentally injurious. It is contended that neither the minor nor her family wish to continue such unwanted pregnancy as it would also amount to stigma.

It may apposite to take note that an application raising identical prayer already stands dealt with and rejected vide order dated 18.04.2019 passed by the learned Additional Sessions Judge, Fast Track Court, Panipat (Annexure P-3).

Perusal of the order at Annexure P-3 would reveal that a report regarding termination of pregnancy had been obtained from the Board of Medical Officers at General Hospital, Panipat and as per such report dated 15.04.2019, the victim was found to be pregnant for 23 weeks.

Section 3 of the Minor Termination of Pregnancy Act, 1971 reads as follows:

“3. When pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith,

that-

(i) 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; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Explanation 1.-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. Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a ⁴ [mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

There is a clear embargo against medical termination of pregnancy where the length of pregnancy exceeds 20 weeks.

As of date, the period of pregnancy would be 27 weeks approximately.

In view of the above, the prayer made in the instant petition cannot be accepted.

There is however, the aspect of the well being of the victim which requires to be addressed.

A copy of the writ petition already stood furnished upon the learned State counsel. An affidavit dated 13.05.2019 of the Deputy Commissioner, Panipat along with Annexure R-1 has been filed and the same is taken on record. Complete copy thereof has been furnished to counsel opposite.

As per affidavit, Court has been apprised that the victim is currently lodged in Hari Mahila Vikas Samiti, Open Shelter Home, Panipat as there is no permanent shelter home in District Panipat.

Learned State counsel upon instruction from Ms. Padma Rani, Chairperson, Child Welfare Committee, Panipat submits that all the day to day expenses, medical expenses and other expenses of the victim shall be borne by the Government. Statement is accepted.

That apart, learned State counsel would refer to Annexure R-1 along with affidavit of the Deputy Commissioner, Panipat to submit that the process for awarding compensation to the victim has already been initiated from the office of the District Child Protection Officer, Panipat and to the Secretary, District Legal Services Authority, Panipat. Court has further been informed that the District Child Protection Officer, Panipat would be the custodian of the compensation amount that would be granted and such amount would be released to the victim only upon attaining the age of majority.

No further directions are required to be passed.

Writ petition is disposed of.

At this stage, counsel for the petitioner would make an assertion that even though the matter had been reported/complaint lodged on 22.03.2019 and a request had been made for medical termination of pregnancy at that stage itself but there has been a delay on the part of the Investigating agency as also the doctors concerned in dealing with such request. This is a matter which involves questions of fact. Liberty is granted to the petitioner to agitate and pursue such prayer with the concerned authorities.

Disposed of.

14.05.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |