

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

**CWP-21385-2019 (O&M)
Date of Decision:27.08.2019**

Kartik Devi & others

... Petitioners

Versus

State of Haryana & others

... Respondents

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

Present:- Mr. Deepender Singh, Advocate for the petitioners.

Mr. Siddharth Sanwaria, DAG, Haryana.

Mr. Anil Kumar Sharma, Advocate for respondent No.4.

....

TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioners No.1 and 2 are the parents of petitioner No.3 (name withheld).

On the statement recorded on 19.07.2019 of petitioner No.3, FIR No.97 dated 19.07.2019 under Section 6 of the POCSO Act and Section 452/506/34 IPC was registered at Women Police Station Ballabhgarh, District Faridabad. Version of the complainant/petitioner No.3 herein was that she was aged 12 years and 9 months and that her mother had gone to the village close to the festival of Holi. Her father was a daily wager and used to attend to the night duty. Taking advantage of such situation, the complainant was sexually assaulted by two accused, namely, Rajneeti and Arjun. It was further alleged that she had been threatened not to disclose about the incident and it was on account of such fear instilled in her that she did not disclose about the incident. It is only subsequently in the month of July,

2019 that she started vomiting and her mother took her to a doctor and a check up revealed that she had been impregnated.

Instant writ petition is at the hands of the hapless parents as also the minor seeking the issuance of a writ of mandamus for directions to be issued for medical termination of her pregnancy.

Pleadings on record would indicate that the matter was taken up by the Child Welfare Committee and a view was formed that a Medical Board be constituted so as to afford to the victim appropriate treatment and further action. Placed on record at Annexure P-4 is the report of a Medical Committee dated 01.08.2019 and which merely recites that an ultrasound test has been done on 30.07.2019 and which shows a single live foetus of 20 weeks, 1 day + 2 weeks. Opinion has been given that as per the provisions of the Medical Termination and Pregnancy Act, 1971, the pregnancy cannot be terminated.

It is against such brief factual backdrop that the instant writ petition has been filed.

It may be taken note that in pursuance to a communication received from the Ministry of Health and Family Welfare, the tertiary level Government Medical Institutes were called upon to establish Permanent Medical Boards to examine the cases of medical termination of pregnancy beyond 20 weeks. A Permanent Medical Board already stands approved by the Director, PGIMER, Chandigarh and stands constituted.

The instant writ petition had come up for preliminary hearing before this Court on 09.08.2019 and notice of motion had been issued. Subsequently, on 19.08.2019, a direction had been issued by this Court for

petitioner No.3 to be examined by the Permanent Medical Board under PGIMER, Chandigarh.

In compliance of the order passed by this Court, petitioner has been duly examined by the Permanent Medical Board and the report has also been furnished by counsel representing respondent No.4/PGIMER, Chandigarh.

The report reads as follows:

“Subject: CWP No.21385 of 2019 titled as Kartik Devi Vs. State of Haryana & another in the Hon'ble High Court of Punjab and Haryana at Chandigarh regarding patient petitioner No.3 rape victim aged 12 yrs. CR.No.201905052918.

With reference to the directions received from the Hon'ble Punjab and Haryana High Court dated 19.08.2019 the petitioner No.3 was medically evaluated by the Permanent Medical Board at PGIMER, Chandigarh on dated 20/08/2019. Following are the observations:

- 1. As per the ultrasound done on 20/08/2019 the period of gestation is 22+5 weeks with single life health intrauterine fetus. NO gross congenital anomaly seen.*
- 2. Detailed psychiatric evaluation of the patient is suggestive of psychological distress due to the ongoing stressors due to pregnancy.*
- 3. The possibility of such ongoing mental distress due to her present state of pregnancy and further continuation of pregnancy resulting in grave injury to her mental health cannot be ruled out.*
- 4. As per the gynecological assessment, such pregnancies may only be delivered by caesarean section on term delivery as the physical stature of the child is not compatible with the normal vaginal delivery parameters.*

Such surgical intervention in itself poses a great risk to her health and may have long term psychological as well as physical consequences.

5. Keeping in view the above, Permanent Medical Board recommends medical termination of pregnancy at this stage.

*Sd/-
Prof. Y.S. Bansal
(Member)*

*Sd/-
Dr. Tulika Singh
(Member)*

*Sd/-
Prof. Bhavneet Bharti
(Member)*

*Sd/-
Dr. Manoj Goyal
(Member)*

*Sd/-
Dr. Ruchita Shah
(Member)*

*Sd/-
Dr. Himanshu Gupta
(Member)*

*Sd/-
Dr. Sahajal Dhooria
(Member)*

*Sd/-
Dr. Anupriya Kaur
(Member)*

*Sd/-
Prof. Nandita Kakkar
(Member)*

*Sd/-
Prof. Rashmi Bagga
(Chairperson)*

*Sd/-
Dr. Ranjana Singh
(Convener)"*

Section 3 of the Medical Termination and 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.”

In the considered view of this Court, case of the petitioner would fall under Section 3(2)(b)(ii) but for the time period embargo of 20 weeks. The clear opinion given by the Permanent Medical Board constituted at PGIMER, Chandigarh is that upon detailed psychiatric evaluation, it has been found that the patient is under psychological distress on account of the ongoing stressors due to pregnancy. It has further been opined that disability of such ongoing mental distress due to her present state of pregnancy and further continuation of pregnancy resulting in grave injury to her mental health cannot be ruled out. Furthermore, as per report and upon gynecological assessment such pregnancies can only be delivered by caesarean section as the physical stature of the child on account of her tender age is not compatible with the normal vaginal delivery parameters. It has also been opined that such surgical intervention in itself would pose a great risk to her health and may have long term psychological as well as physical consequences.

The categoric recommendation given by the Medical Board chaired by Professor Dr. Rashmi Bagga, who is none other than the head of the Obstetrics and Gynecology Department is for medical termination of pregnancy at this stage.

In the circumstances of the present case, it would be difficult for this Court to refuse permission to the petitioner No.3 to undergo medical termination of pregnancy. There would be no basis for this Court not to

accept the recommendations made by the Permanent Medical Board and the constitution of which was approved by the Director, PGIMER, Chandigarh.

For the reasons recorded above, writ petition is allowed.

The Director, PGIMER, Chandigarh is requested to get the pregnancy of petitioner No.3 terminated under the supervision of the head of the Department (Obstetrics and Gynecology), PGIMER, Chandigarh.

Needless to observe that all necessary facilities for undertaking such procedure be afforded to the minor/petitioner No.3.

It is further directed that the expenditure/medical expenses that would be borne by the PGIMER, Chandigarh for undertaking such procedure in the first instance shall be reimbursed to the Institute by the State of Haryana, Department of Women and Child Development.

A copy of this order be furnished to counsel for the parties under the signatures of the Bench Secretary to ensure necessary and immediate compliance.

Disposed of.

27.08.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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