

**105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-30329-2019

Date of decision: 30.10.2019

M (name Withheld) minor and another**Petitioners.**
vs.
State of Punjab and others**Respondents.**

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Petitioner No. 2 in person with
Mr. Amit Goyal, Advocate for the petitioners.

Mr. Ayush Sarna, Assistant Advocate General, Punjab.

Mr. Vikrant Sharma, Advocate for respondent No. 4.

.....

Sanjay Kumar, J. (ORAL)

This writ petition was filed seeking a direction to the authorities to terminate the pregnancy of the minor child, the first petitioner, who is represented by her mother, the second petitioner-Nisha Patel. This pregnancy was allegedly caused by the rape committed upon her by a known individual. Pursuant to the order dated 19.10.2019, passed in this writ petition, the Post Graduate Institute of Medical Education and Research, Chandigarh, the fourth respondent, subjected the first petitioner to medical examination to ascertain as to whether her pregnancy could be safely terminated without any danger to her life and health. The Permanent Board of Doctors constituted by the fourth respondent examined the first petitioner and submitted Report dated 21.10.2019 stating that it did not recommend termination keeping in mind the advanced stage of the pregnancy. The Board advised that the first petitioner should get regular obstetric checkups done and go in for an institutional delivery.

The Board opined that the first petitioner would also require periodic

psychological assessment and support.

Upon being informed of the recommendations made by the Permanent Board of Doctors, the second petitioner and her husband, the father of the first petitioner, are stated to have decided to allow the first petitioner to go ahead with the pregnancy and thereafter take a decision as to putting up the child born to her for adoption.

Mr. Amit Goyal, learned counsel representing the petitioners, would however submit that the first petitioner is entitled to claim compensation apart from reimbursement of medical expenditure.

Mr. Ayush Sarna, learned Assistant Advocate General, Punjab, appearing for the authorities would impress upon this Court that in terms of the Punjab Victim Compensation Scheme, 2017, promulgated by the Government of Punjab, vide Notification dated 30.11.2017, it would be necessary that the offence committed upon the first petitioner is registered in the first instance and without a FIR being lodged, the process cannot be set in motion.

Clause 6 of the Notification dated 30.11.2017, titled '*Criteria for Grant of Compensation*', deals with this aspect. In terms thereof, it is essential that the second petitioner takes steps to lodge a written complaint as to the commission of rape upon the first petitioner before any claim can be made for compensation under the said Policy.

The second petitioner, having consulted her husband, informed this Court that they have now decided to set the process of law in motion and that a complaint would be lodged with the

jurisdictional police authorities in Jalandhar in the State of Punjab.

The first petitioner is presently lodged in the hospital of the fourth respondent. However, this Court is informed that she has not been provided a private room as on date.

Needless to state, as the first petitioner is a victim of an offence falling under the provisions of the Protection of Children from Sexual Offences Act, 2012, (for short 'the Act'), she would be entitled to all the safeguards prescribed thereunder. However, *Section 19* of the Act mandates that every offence thereunder should be reported to the authorities concerned. As the second petitioner and her husband have now decided to abide by the said mandate, they would be entitled to seek all the procedural safeguards set out in the Act for the first petitioner.

Reference may also be made to the judgment of this Court in ***Sikander versus State of Haryana and others, 2018 (3) Law Herald 2583***. That was also a case pertaining to a rape victim and in terms of the medical recommendation, this Court did not grant permission for termination of the pregnancy. However, this Court issued various directions in relation to the protection of the victim and the steps to be taken during the rest of her pregnancy.

For reasons alike as were stated in the aforesaid decision and in terms thereof, the fourth respondent is directed to provide a private room to the first petitioner so that she can be given the required medical and family attention in private. All necessary steps shall be taken by the fourth respondent to properly attend to the first petitioner during the rest of her pregnancy. She shall also be provided the required psychological and psychiatric counselling. The

fourth respondent shall also ensure that adequate privacy is given to the first petitioner and that her name is not divulged in the records.

She shall be shown as M(name Withheld), a minor, represented by her mother-Nisha Patel.

Before parting with the case, this Court deems it necessary to also direct the jurisdictional police authorities who would be dealing with the case after registration of the FIR to take all necessary steps to maintain sensitivity and ensure the confidentiality and privacy of the first petitioner and her family members. The police authorities shall not insist upon the presence of the father of the first petitioner, who is employed in the Army and shall have interaction only with the mother, the second petitioner herein. They shall not approach the petitioners or their establishment in the Army Headquarters at Jalandhar, Punjab in uniform and shall restrict their visits to the Army Headquarters to the bare minimum. Any visits to the Army Headquarters, for the purpose of investigation and for recording any evidence or proceedings, shall be undertaken by the police in plain clothes. The police authorities shall secure the mobile number of the second petitioner and seek her assistance as and when the same is required by them.

The Chief Secretary, Punjab, the Principal Secretary of the Health Department, Punjab and all other concerned departments of the State of Punjab, including the Finance Department, shall ensure quick reimbursement of the bills and medical expenditure incurred by the second petitioner, in relation to the delivery of the first petitioner and her hospitalization in connection therewith in the fourth respondent.

Such reimbursement shall be effected forthwith upon direct submission of the bills by the fourth respondent without unnecessary red tape. Such exercise, in any event, shall not exceed a period of one month after the date of submission of the bills by the fourth respondent. The fourth respondent shall also take necessary measures to secure and retain the samples of DNA of the fetus for the purposes of the case. The authorities and respondent No.4 shall also take all necessary steps to coordinate with the Child Adoption and Resource Agency (CARA) to arrange for the adoption of the child born to the first petitioner in due course. The second petitioner shall complete all necessary formalities in this regard. The authorities shall render all necessary assistance to her in this process.

The writ petition is disposed of accordingly.

A copy of this order shall be given to the parties under the signature of the Bench Secretary of this Court.

(SANJAY KUMAR)
JUDGE

30.10.2019
preeti

whether speaking/non speaking	yes/no
whether reportable/non reportable	yes/no