

09.09.2020
Item No.05(S.L.)
(D.C & S.M)

(Via Video Conference)

W.P.A. 6606 of 2020
With
IA NO: CAN 1/2020 (Old No: CAN 5423 of 2020)

Nandini Mali & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Abhishek Banerjee.
... for the petitioners.

Mr. Subhabrata Dutta,
Mr. Debasis Sarkar
... for the State.

The petitioner no.1 is a minor girl aged about 14 years. She was victim of rape and as a consequence of such rape she became pregnant.

The petitioner no. 2 is the mother of the petitioner no. 1.

A criminal case being POCSO case no. 46 of 2020 is pending before the 2nd Court learned Additional Sessions Judge, Paschim Medinipur for the commission of said offence of rape.

In terms of a direction of the said Court the investigating officer of the said criminal case produced the petitioner no. 1 and her parents before the Child Welfare Committee, Paschim Medinipur.

The petitioner no. 1 and her parents filed separate applications before the said committee seeking permission to abort the pregnancy of the petitioner no. 1.

The said committee in its order dated July 30, 2020, annexure P4 to the writ petition opined that the

abortion of the pregnancy of the petitioner no. 1 is necessary for the best interest of the child as per the principle laid down under the provisions of the Juvenile Justice Act, 2015 and ordered the Superintendent of Kharagpur SD Hospital to constitute a medical board for the purpose of examining the petitioner no. 1 and to take a decision about the abortion of her pregnancy.

A medical board was accordingly constituted. The said board by its report dated August 04, 2020 opined that since the USG report of the petitioner no. 1 suggests “foetal size corresponds with 21.5 weeks of gestation” the medical termination of the pregnancy of the petitioner no. 1 cannot be performed as the provision of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as ‘the said Act’ in short) puts a restriction on the termination of pregnancy after twenty weeks.

The petitioners by the present writ petition are now seeking permission for termination of the pregnancy of the petitioner no. 1.

A co-ordinate Bench considering the welfare of the victim girl by the order dated August 26, 2020 directed the medical board constituted earlier to submit its considered opinion as to whether the termination of pregnancy of the petitioner no. 1 would in any way endanger her health at present or future.

Mr. Subhabrata Dutta, learned advocate appearing on behalf of the State submits that pursuant to the said direction the said medical board has formed an opinion which he has sent to this Court through police

personnel but none is present in Court to handover the said opinion.

However, Mr. Abhishek Banerjee learned advocate for the petitioners handed over a copy of the said opinion to this Court which is taken on record.

On perusal of the said opinion it appears that the medical board is of the opinion that the medical termination of the pregnancy of the petitioner no. 1 may cause physical harm to her, nonetheless recommended as follows:-

“If the medical termination of pregnancy be attempted considering the high risks involved to the life of the mother, it should preferably be done at the earliest in any tertiary care center with ICU/HDU facilities, 24 hours blood bank service etc.”

Mr. Banerjee, learned advocate appearing on behalf of the petitioners relying on a Division Bench decision of this Court in the case of **Suparna Debnath & Anr. Vs. State of West Bengal & Ors.** reported in **AIR 2019 Calcutta 99** submits that merely because the pregnancy has exceeded 25 weeks, the permission sought for cannot be denied if such termination is necessary to save the victim girl from further trauma.

Mr. Dutta, submits that it is for the petitioners to take the risk of such termination.

Having heard the learned counsel for the parties and on perusal of the reports, it appears that the pregnancy of the petitioner no. 1 is admittedly more than

25 weeks which exceeds the time within which the pregnancy can be medically terminated in terms of Section 3 of the said Act, but the bar contemplated under the said provision of the said Act is not an absolute bar to terminate the pregnancy as has been held by the Division Bench of this Court in the case of **Suparna Debnath (supra)**.

The petitioner no.1 has already suffered a mental injury as envisaged under the Explanation 1 appended to Section 3 of the said Act.

The pregnancy of the petitioner no.1 if is not allowed to be terminated she would certainly suffer further mental injury which is not desirable particularly when she is only fourteen years old.

The petitioners are ready to take the risk of physical harm that may be caused to the petitioner no. 1.

For the reasons discussed above permission to terminate the pregnancy of the petitioner no. 1 as sought for is granted.

The Chief Medical Officer of Health, Paschim Medinipur the respondent no. 5 herein is directed to take immediate step for medical termination of the pregnancy of the petitioner no. 1 Nandini Mali daughter of Shri. Ganesh Mali Village. Meudi, Post Office. Kanikha Police Statation. Kharagpur (Local). The respondent no. 5 while arranging such termination must bear in mind that it should be done at the earliest in any tertiary care center with ICU/HDU facilities 24 hours blood bank service etc as suggested by the medical board in its opinion dated August 28, 2020.

With the above terms W.P.A 6606 of 2020 is disposed of. The parties are directed to act on the basis of the server copy of this order.

The connected application being CAN 1 of 2020(old CAN 5423 of 2020) is also disposed of accordingly.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)