

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 250 of 2020**

1. Ms. X D/o. Dhananjay Nishad, Aged About 16 Years R/o Village Raitum, P.S. Patewa, District Mahasamund Chhattisgarh, Since Minor Through Her Natural Guardian Father Dhananjay Nishad S/o Banshilal Nishad, Age About 40 Years, R/o Village Raitum, P.S. Patewa, District Mahasamund Chhattisgarh
2. Dhananjay Nishad S/o. Banshilal Nishad, Aged About 40 Years R/o. Village Raitum, P.S. Patewa, District Mahasamund Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Chief Medical Officer, (C.M.O.)/ Medical Board Of District Hospital, Mahasamund Chhattisgarh
3. Head Officer Of Department Gynecologist, (H.O.D.)- Gynaic, District Hospital, Mahasamund Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Utkal Pradhan, Advocate
For State	:	Mr. V. R. Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****21/01/2020**

1. This Court vide previous order dated 17.01.2020 had directed the respondent No.2 to get the petitioner No.1 examined by two medical practitioners under him.
2. The respondent No.2 has submitted his report by way of an application filed the respondents on 21.01.2020. In the report submitted by the respondent No.2, they have categorically given an opinion that the victim can be safely subjected to termination of pregnancy.
3. As has been stated in the preceding dates order sheet, the victim in the instant case is a minor girl, aged around 15 years and on medical examination, she has been found to be conceived of 14 weeks and 6 days.

4. It is a case where the the petitioner No.1 is a victim of a rape committed by one Vijay Sen, who has since been prosecuted in a criminal case punishable under Section 376 of the Indian Penal Code and also Sections 4 & 6 of the Protection of Children from the Sexual Offences Act in a crime registered at Police Station Patewa, District Mahasamund as Crime No. 5/2020.
5. The contention of the counsel for the petitioners is that firstly the petitioner no.1 is of unsound mind, as would be evident from the F.I.R. itself and secondly the petitioner is a minor girl, aged around 15 years and thirdly the petitioner No.1 has got conceived, because of a forceful rape committed by the accused Vijay Sen without her consent and therefore for all these reasons the counsel for the petitioners submits that the petitioner may be permitted to terminate her pregnancy.
6. The petitioners have relied upon an order passed by this Court on 27.08.2019 passed in WPC No. 2869/2019 in support of her contention.
7. The State counsel as has been held earlier on the previous date directed to get the medical opinion so far as the health condition of the petitioner No.1 is concerned and the respondent No.2 has submitted their report showing that the petitioner No.1 can be permitted to termination of pregnancy.
8. It would be relevant at this juncture to refer to paragraph Nos. 6 to 9 of the judgment passed in WPC No. 2869/2019 on 27.08.2019, which are as under:-

“6. The Supreme Court in the case of Meera Santosh Pal & others Versus Union of India and others {(2017) 3 SCC 462} has reiterated the view taken in the case of Suchita Srivastava Vs. Chandigarh

Admn {(2009) 9 SCC 1} and has observed thus in para 9, which is reproduced hereunder:-

“9. In Suchita Srivastava v. Chandigarh Admn {(2009) 9 SCC 1} a Bench of three Judges held “a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution”. The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court observed as follows :-

“22. There is no doubt that a woman’s right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman’s right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman’s entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.”

7. Reading of section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the Act of 1971') makes it clear that where length of pregnancy does not exceed 20 weeks and not less than two registered medical practitioners have formed an opinion in good faith that the continuance of pregnancy would involve a risk to the life of pregnant woman or grave injury to her physical or mental health, the pregnancy can be terminated by a registered medical practitioner. This act of medical practitioner, if aforesaid conditions are satisfied, will not attract the penal provisions mentioned in Indian Penal Code. In other words, such registered medical practitioner shall not be guilty of any offence under the IPC or under any other law for the time being in force if conditions mentioned in Section 3 or Section 5 of the Act are satisfied.

8. Explanation 1 of the Act of 1971 purports that when 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. Sub section 4(a) of section 3 further contemplates that no pregnancy of a woman, who has not attained the age of eighteen years, for termination of the pregnancy consent has to be obtained in writing from her guardian.

9. The instant petition has been preferred by the mother of the victim being her natural guardian and the victim has also been made petitioner No.1 and the report which is called from the team of the two medical practitioner of Civil Surgeon, Main Hospital, Mahasamund shows that the patient is fit to undergo termination of pregnancy and the pregnancy is of 17 weeks 01 days.”

9. Based on the aforesaid findings, the Coordinate Bench of this Court had allowed the writ petition and permitted the petitioner for terminating the pregnancy.
10. In view of the aforesaid facts and circumstances of the case and also taking note of the decision of this Court rendered in WPC No. 2869/2019 decided on 27.08.2019, this Court is also inclined to take the same stand and allow the present writ petition permitting the petitioner No.1 to undergo with the termination of her pregnancy.
11. Counsel for the petitioners further submits that the petitioner No.1 the victim in the instant case has ready been admitted at the District Hospital, at Mahasamund. Accordingly, it is directed that let the petitioners produce a copy of this order before the respondent No.2 and the respondent No.2 in turn shall ensure that the petitioner No.1 is subjected to medical termination under the supervision of two registered medical practitioners preferably two senior Doctors available in the said district after obtaining due consent of the petitioner No.1 as well as her guardian. The DNA sample of the fetus shall also be taken and preserved for further evidence as the criminal case against the accused is still pending. Let this exercise be carried without any further delay.
12. With the aforesaid observations, the present writ petition stands allowed and disposed of.
13. Certified copy today.

Sd/-
(P. Sam Koshy)
Judge