

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1510 of 2020**

Ms. 'X' D/o Jawahar Vishwakarma Aged About 20 Years R/o Near
Durga Chowk, Katiyapara, Bilaspur, Tahsil And District Bilaspur,
Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Department Of Health And Family, Mahanadi Bhavan Mantralaya, Atal Nagar, Raipur, District Raipur, Chhattisgarh
2. Collector, Bilaspur, District Bilaspur, Chhattisgarh
3. Chief Medical And Health Officer, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Dr. Kumaresh Tiwari, Advocate
For State	:	Mr. V. R. Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/07/2020

1. This Court on the previous date of hearing i.e. 10.07.2020 had asked the respondent No.3-the Chief Medical & Health Officer, Bilaspur to submit the medical report so far as the health condition of the petitioner is concerned.
2. State counsel has submitted a report dated 15.07.2020 giving the details of the health condition of the petitioner.
3. From the perusal of the facts as narrated in the writ petition, it appears that the petitioner is a victim of rape and an F.I.R. in this regard was lodged on 22.06.2020 at City Kotwali, Bilaspur vide Crime No. 0149/2020. The person against whom the F.I.R. has been lodged i.e. the accused person, who is alleged to have committed

the rape is Santosh Yadav. Pursuant to the F.I.R., the police have registered a case under Sections 376 & 506 of the IPC. As per the order dated 10.07.2020 passed by this Court, the petitioner was subjected to medication examination with two of the medical practitioners at the District Hospital, Bilaspur on 14.07.2020. The Doctors after examining the petitioner have submitted the following report:-

“H/O- Menarche - Age the age of 12 years
LMP- 10 April 2020
EDD- 17 Jan. 2021
M/I- Tattoo mark "मा" on flexes aspect of Right forearm lower 3rd.
Tattoo mark "S.V." left forearm flexes aspect middle 3rd
G.E.- Hight- 5.1”F Weight - 41 kg Dentition $\overline{7*7}$
 $\overline{7*7}$
Well conscious, orientation to time, place & person satisfactory.
Vital settled, pallor and edema- nil,
S/E Clinically NAD
Sec sex characteristics well developed, Nipple & areola
pigmentation present.
P/A- soft, abdominal muscle tone good.
P/V- hymen ruptured at 50°70' & 110° clock position, old hymen
tear present vaginal opening 2 finger easily OS closed, cervical
mouth non tender, Bleeding P/V & discharge absent. Uterus
enlarged 12 to 14 weeks sized, soft, FHS not audible & stethoscope.
Advise- USG abdomen for gestational age & fetal wellbeing.
Opinion- She is pregnant about 12-14 weeks sized.”

From the report that has been submitted by the Doctors, it has been advised that the petitioner can be permitted to get the pregnancy terminated.

4. 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 day.”

5. Based on the aforesaid findings, the Coordinate Bench of this Court had allowed the writ petition and permitted the petitioner No.1 for terminating the pregnancy.
6. Bare perusal of the facts that the present case would show that the said judgment of this Court in WPC No. 2869/2019 is on similar footing and the condition of the petitioner therein and the petitioner herein also are almost similar. Considering the fact that the petitioner herein has got conceived because of the alleged crime committed against her and out of an act without her consent. Coupled with the fact that the petitioner is an unmarried girl, the continuation of the pregnancy would involve great risk of causing grave injury to the mental health of the petitioner, which would also be detrimental to the fetus, which may further result in graver injury. This Court is therefore of the opinion that under the circumstances, the petitioner should be permitted termination of her pregnancy under the supervision of registered medical practitioners. If the petitioner is not

granted this permission at this stage, she would be forced to undergo great amount of anguish, depression coupled with the social stigma of conceiving before marriage, which would further cause mental trauma to the petitioner, for this reason also the petitioner should be granted the permission.

7. 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 to undergo with the termination of her pregnancy.
8. Accordingly, it is directed that let the petitioner approach the respondent No.3 on 17th of July, 2020 itself and in turn the respondent No.3 shall ensure that the petitioner is subjected to medical termination of her pregnancy under the supervision of two registered medical practitioners preferably two senior Doctors available in the district after obtaining due consent of the petitioner as well as her guardian. Accordingly, it is directed that the petitioner shall be subjected to medical termination of pregnancy under the supervision of the respondent No.3 and the team of Doctors, who have examined the petitioner by tomorrow itself. While undergoing the process of medical termination of pregnancy the respondent No.3 is directed to obtain all necessary consents and documentation part, which is otherwise required including the consent of the petitioner and that of the guardian or any other responsible member of the family of the petitioner from the same. 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.

9. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Certified copy today.

Sd/-
(P. Sam Koshy)
Judge

Ved