IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1509 of 2020

==========

SHAMALBEN RAVSAHEB SURYAVANSHI

Versus

STATE OF GUJARAT

==========

Appearance:
MR IMTIYAZ I MANSURI(9159) for the Applicant(s) No. 1
MR PRANAV TRIVEDI, APP (2) for the Respondent(s) No. 1

==========

CORAM: **HONOURABLE MR.JUSTICE S.H.VORA**

Date : 03/03/2020

ORAL ORDER

1 With the consent of learned advocate for the petitioner and learned APP, present petition is taken up for final disposal, in view of short but serious issue involved in the application.

2. Present petition is preferred by the mother of the victim minor girl under Article 226 of the Constitution of India read with the provisions of the Medical Termination of Pregnancy Act, 1971.

3. On 28.02.2020, this Court passed the following order :-

> ***"Notice*** *returnable on 03.03.2020. Learned APP waives service of notice on behalf of the respondent – State. Meanwhile, let the victim minor – Shardha D/o. Ravsaheb Suryavansi be examined by the empaneled Doctors at Civil Hospital, Vadodara. She should be admitted immediately and medical examination shall be carried out to let this Court know as to whether termination of pregnancy is medically feasible considering the fact that*

she is allegedly victim of rape and her guardian inclines to terminate her pregnancy. Doctors concerned shall follow settled guidelines to know her mental and psychological preparedness.

Copy of this order be provided to learned APP forthwith. Direct service is permitted ***today.”***

4. Pursuant to the order dated 28.02.2020, learned APP has received report of panel of Doctors dated 02.03.2020, Medical College, SSG Hospital, Vadodara. The said report is ordered to be taken on record. The victim minor girl viz. Ms. Shardha D/o. Ravsaheb Suryavanshi is examined by two panel of Doctors of Medical College, SSG Hospital, Vadodara viz. Dr. A.V.Gokhalre, Prof. and Head, Dept. of OG and Dr. Shonali Agarwal, Associate Professor, Dept. of OG, Vadodara.

5. Panel of Doctors in terms opined as under :-

(1) On history and clinical examination Ms. Shardha Suryavanshi is having singleton viable pregnancy of 20-22 weeks of gestation. On ultrasound examination period of gestation is 21 weeks and 0 days (done by Associate Prof. Radiology).

(2) On clinical examination, no significant systemic abnormality detected. Moreover at present she does not show signs of any associated pregnancy complications.

(3) In light of the current amendment of MTP act in 2020, Termination of pregnancy can be offered to her as she is a vulnerable women (rape survivor and minor). Her mother is willing for the termination.

(4) There is inherent risk of termination of pregnancy at this age (13 years + 2 months). However, continuation of pregnancy in this case may result in psychological, social and physical trauma to her which outweighs the risk of termination of pregnancy at current gestational age.

(5) MTP Amendment Act, 2020 allows termination upto 24 weeks of pregnancy. In this case necessary orders for

termination of pregnancy to be issued by the court at the earliest."

6. This Court has heard both the sides and considered the opinion / report duly signed by panel of Doctors, Medical College, SSG Hospital, Vadodara submitted by them through learned APP to this Court.

7. Learned advocate for the petitioner submitted that the termination of pregnancy is permissible upto 20 weeks and at the time of examination by concerned Doctors on 02.03.2020, pregnancy of 21 weeks 0 days is noted.

8. Learned APP has urged the Court that the Court may in given set of circumstances of case, issue direction for termination of pregnancy. However, the tissues from foetus may be directed to be handed over for the purpose of DNA sampling in scientific manner to the Investigating Officer.

9. On hearing both the sides, this Court has noticed that the victim is alleged to have been abducted by the accused, named in the FIR being C.R.No.I-11196017200122 registered with Panigate Police Station, Vadodara for the offence punishable under section 363, 366, 506(2), 376(2)(i), 376(2)(j) of the IPC and under sections 4, 5(L), 5(j)2 and 6 of the POCSO Act.

10. The victim minor girl is already carrying about 21 weeks and 0 days of pregnancy with specific report / opinion of panel of Doctors that termination of pregnancy is medically feasible. No doubt, pregnancy exceeds 21 weeks, but considering the provisions of Section 5 of the Medical Termination of Pregnancy Act, 1971 and opinion of registered Medical

Practitioners, termination of pregnancy is immediately necessary to save mental and physical health of the victim minor girl.

11. At this stage, the Court has considered the decision wherein 'the best interest' theory for the victim minor girl is settled and considering her trauma, mental agony and possibility of social ostracism, the Court is of opinion that when the medical opinion issued by the Panel of Doctors is taken into consideration, let termination of pregnancy be carried out at the earliest with medical facilities available to the victim minor girl and on ensuring proper care in pre-termination and post termination period. The Doctors shall take necessary tissue samples from the DNA identification by following scientific practice for DNA identification and such samples shall be handed over to the Investigating Officer concerned.

12. Intimation of this order shall be given to the panel of Doctors, Medical College, SSG Hospital, Vadodara forthwith by the learned APP. Copy of this order shall also be sent by the Registry to the Medical Superintendent, Medical College, SSG Hospital, Vadodara.

13. Since the pregnancy of victim exceeds 21 weeks as of now, the Court directs three senior most Gynecologists of Medical College, SSG Hospital, Vadodara to examine the victim minor girl and also by psychologist attached to the Medical College, SSG Hospital, Vadodara. The said team of Doctors shall examine the victim minor girl Ms.Shardha D/o. Ravsaheb Suryavansi and after having interaction with her, undertake the procedure of surgery on urgent basis along with other required expert Doctors like Physician, Anesthetic etc., if

otherwise, there is unanimity amongst the Doctors to the effect that such termination would be carried out safely,

14. Liberty is reserved in favour of the victim minor girl to apply for interim compensation before the Chairman, District Legal Services Authority, Vadodara and on such request being made by the victim in this regard, the concerned Chairman, District Legal Services Authority after following prescribed procedure shall award interim compensation in accordance with law.

15. With above directions, present petition stands disposed of. Direct service **today** is permitted.

(S.H.VORA, J)

SATISH