

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION (ST.) NO.10591/2020

MS.VMS

(Since the petitioner was minor, her identity is not disclosed)

...Petitioner..

VERSUS

1] The State of Maharashtra,
through Principal Secretary,
Public Health Department,
Government of Maharashtra.

2] District Health Officer,
Osmanabad. Dist.Osmanabad.

...Respondents..

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Shri S.G. Shinde with Shri A.K. Bhosale, Advocates for petitioner.
Smt.Vaishali Jadhav, AGP for respondent nos.1 & 2.

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CORAM: V.L. ACHLIYA, J.

DATE: 15.05.2020

PER COURT :

1] Rule. Rule made returnable forthwith. By consent, heard finally.

2] By this petition filed under Article 226 of the Constitution of India, the petitioner has approached with the relief as under:-

“b] By issuing writ of mandamus or any other writ of like nature or any direction directing that the petitioner

may abort by getting proper medical aid.

c] Petitioner may be allowed to abort in private hospital."

3] Heard learned counsel for the petitioner and learned AGP for the respondent nos.1 & 2. Perused the report of the Medical Board.

4] In brief, it is the contention of the petitioner that few months prior to registration of the offence, the petitioner got acquainted with the accused. The petitioner was minor. By taking disadvantage of minority of the petitioner and developing close intimacy with the petitioner, the accused took her to an isolated place and sexually exploited against her will and desire. Acting under the fear that she will be disreputed in the society, she has not disclosed the incident and continued to face the atrocities committed on the part of the accused. She developed pregnancy due to forcible sexual intercourse committed with her by the accused. She tried to persuade the accused to perform marriage to legitimize the child conceived from the accused. However, the accused refused to perform marriage with her. On the basis of complaint lodged by her, the offence u/s 376(1) and Sections 3,4 & 8 of POSCO Act has been registered against the accused on 28.4.2020 with Police Station, Osmanabad. It is submitted that the

petitioner visited the Government Medical College and General Hospital, Latur, for termination of pregnancy. However, the authority of the hospital expressed inability to terminate the pregnancy for the reason that pregnancy being of more than 20 weeks. In this background, the petitioner is left with no alternative other than to invoke inherent jurisdiction of this Court under Article 226 of the Constitution of India to allow her to get her pregnancy terminated through authorized centre and for appropriate direction to the authority in that behalf.

5] It is submitted that it is difficult for the petitioner to give birth to child born out of illegitimate relationship and forcible intercourse. She is a victim of sexual exploitation. The birth to such a child would cause a grave injury to her mental health. Giving birth to such a child would ruin her future. It is contended that in the facts and circumstances of the case, extraordinary jurisdiction of this Court deserves to be invoked to protect the dignity of the petitioner and thereby to protect her right to life as guaranteed under Article 21 of the Constitution of India.

6] Learned AGP submits that in view of the report received from the Medical Board, appropriate orders may be passed in the matter.

7] Pursuant to order dated 12.5.2020 passed by this Court,

the petitioner appeared before the Medical Board at Swami Ramanand Teerth Rural Medical College and Hospital at Ambajogai on 13.5.2020 for her medical examination. On examination of the petitioner, the Medical Board consisting of Dean of Swami Ramanand Teerth Rural Medical College and Hospital at Ambajogai and six other experts examined the petitioner and opined that the petitioner is fit for termination of pregnancy and given the opinion as under:-

“6] This case is of IPC 376, continuation of pregnancy and birth of child affects the mental and social health of mother constantly, so, on humanitarian and social ground, this committee recommends termination of pregnancy at any government recognized MTP center of choice of patient with due risk.”

8] The facts are not in dispute that the petitioner is a victim of rape. She is carrying undesired pregnancy on account of her sexual exploitation by the accused. It will be difficult for the petitioner to live with dignity in the society with illegitimate child. It is quite settled position that right to life includes the right to live with dignity as contemplated under Article 21 of the Constitution of India. In order to protect her dignity, it is desirable that in the peculiar facts and circumstances of the case, the extraordinary jurisdiction vested with this Court under Article 226 of the

Constitution of India deserves to be invoked. In terms of Explanation-I to Sub-section (2) of Section 3 of the Medical Termination of Pregnancy Act, 1971, the petitioner being a woman carrying pregnancy caused by rape, which presumes to constitute a grave injury to mental health of the pregnant woman i.e. the petitioner, the permission as sought to terminate the undesired pregnancy caused on account of sexual exploitation deserves to be granted. I am, therefore, inclined to allow the petition.

9] The petitioner is permitted to get her undesired pregnancy terminated through the hospital established or maintained by the Government and recognized to terminate the pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971.

10] The investigating officer will be at liberty to approach the concerned authority to preserve the sample of the foetus for the purpose of investigation including DNA test. The concerned authority shall intimate the investigating officer before medically terminating pregnancy of the petitioner.

11] Learned AGP is directed to communicate the order to all concerned including the investigating officer.

12] Rule is made absolute in above terms.

13] All concerned to act upon authenticated copy of the

order to be attested as true copy by the Court Sheristedar of this Court. Authenticated copy of the order be provided to the learned counsel representing the petitioner as well as the learned AGP.

(V.L. ACHLIYA, J.)