

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 4888 OF 2020

XYZ

Through her Natural Guardian i.e. father
Raju Dipa Koli,
Age 43 years, Occu. Labour,
R/o Charthana, Taluka Muktainagar,
District Jalgaon

.. Petitioner

Versus

The State of Maharashtra,
through the Principal Secretary,
Public Health Department,
Mantralaya, Mumbai and ors.

.. Respondents

Mr Harshal Prakash Randhir, Advocate for petitioner
Mr S.N. Kendre, A.G.P. for respondent – State

**CORAM : SUNIL P. DESHMUKH AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 14th July 2020

ORAL ORDER (Per Shrikant D. Kulkarni, J.)

1. The petitioner seeks permission to terminate the pregnancy.
2. The petitioner is a minor and claims to be a rape victim.
3. Under order dated 9th July 2020, this Court had referred the petitioner to the expert Committee at Godavari Foundation's Dr. Ulhas Patil Medical College and Hospital, Jalgaon and directed the expert Committee to examine the petitioner and submit report as required under Section 3 of the Medical Termination of Pregnancy Act, 1971.
4. The expert Committee has examined the petitioner and submitted its report. The report reads thus :

“ After careful examination and investigations the committee has prepared this report pertaining to section 3 of MTP Act, committee arrives at following opinion :

- Patient is having pregnancy of duration 22 weeks;
- Her general health condition is normal;
- Pre anesthetic checkup is normal;
- Other reports such as x-ray, ECG and complete blood counts are normal;
- There is minimum physical risk to life of mother as like general population provided other unexpected mplications does not arise;
- Patient may suffer from mental health hazards if pregnancy continues as the pregnancy is out of rape;
- Sonography reports are attached herewith committee members.”

5. It is opined by the expert Committee that the patient may suffer from mental health hazards if pregnancy continues as the pregnancy is out of rape. It is further opined that there is minimum physical risk to life of mother as like general population provided other unexpected complications does not arise. The general health condition of the petitioner is normal.

6. As pointed earlier, the petitioner is a rape victim. Explanation I to Section 3 (2) (ii) of the Medical Termination of Pregnancy Act, 1971 states that where any pregnancy 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.

7. It appears that the F.I.R. bearing Crime No. 121/2020 (CCTNS No. 0184/2020) dated 24-6-2020 is registered with Muktainagar Police Station, District Jalgaon, for the offences punishable under Sections 376 (2) (i), 376 (2) (n), 370 and 323 of the Indian Penal Code, Section 12 of the Protection of

Children from Sexual Offences Act, 2012 and Section 9, 10 and 11 of the Child Marriage Restraint Act, 2007.

8. Considering explanation I to Section 3 (2) (ii) of the Medical Termination of Pregnancy Act, 1971 and opinion of the Committee and the fact that the petitioner claims to be a rape victim, we allow the petitioner to terminate the pregnancy.

9. The petitioner may get the pregnancy terminated at Godavari Foundation's Dr. Ulhas Patil Medical College and Hospital, Jalgaon which is stated to be authorised under the provisions of the Medical Termination of Pregnancy Act, 1971 or any Government recognised M.T.P. Centre at Jalgaon.

10. Having regard to the fact that the pregnancy carried by the victim is a result of offence of rape, F.I.R. has already been lodged and criminal law has been put in motion to protect the rights of the victim girl. The hospital where pregnancy of petitioner would be terminated shall preserve tissue sample and blood sample of the fetus for carrying out necessary medical tests including DNA, finger printing/mapping. The Investigating Officer who conducted the investigation in the matter shall ensure that the samples of tissues and blood etc. shall be forwarded to the Regional Forensic Laboratory, Aurangabad for DNA, finger printing/mapping and for carrying necessary tests and the samples and report shall be preserved for the purpose of trial of the offence.

11. The police authority/investigating machinery may approach the hospital where the petitioner would terminate the pregnancy. The petitioner shall also inform the concerned police station about the day the petitioner is to terminate the pregnancy.

12. In the light of above, the Writ Petition stands allowed. No order as to costs.

13. Authenticated copy of this order be given to the parties.

(SHRIKANT D. KULKARNI, J.)

(SUNIL P. DESHMUKH, J.)

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