

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-6540 of 2020.

Decided on:- February 20, 2020.

Smt. Kela Devi.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Aakash Juneja, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

Mr. Amit Jhanji, Advocate.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.PC is for issuance of a direction to respondent No.2 to terminate the pregnancy of the minor daughter of the petitioner, as the same has been, unfortunately, caused due to the illegal act, against which an FIR No.47 dated 01.02.2020 under Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 has been registered at Police Station Indri, District Karnal.

Vide order dated February 14, 2020 passed by this Court, respondent No.2 i.e. Chief Medical Officer, Civil Hospital, Karnal was directed to remain present in Court on the next date of hearing i.e. 17.02.2020 so as to assist in the case.

Pursuant to the aforesaid order dated 14.02.2020, Dr. Ashwani Ahuja, Civil Surgeon, Karnal came present in Court and the case was

adjourned to 18.02.2020 with a direction to the State to seek assistance of some Gynaecologist from General Hospital, Sector-6, Panchkula.

On 18.02.2020, when this case came up for hearing before this Court, the following order was passed:

“Petitioner has filed the present petition under Section 482 Cr.P.C., so as to direct respondent No.2 to terminate the pregnancy of her minor daughter, who unfortunately became the victim in the case for which FIR No.47 dated 01.02.2020 under Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006 and Section 6 of the POCSO Act, Police Station Indri, Karnal, has been registered against the accused.

Learned counsel for the petitioner has argued that the victim in the case is minor and as per school leaving certificate, her date of birth is 15.12.2003. Daughter of the petitioner has informed the petitioner on phone that when she had gone to her grandfather's house, she was made to marry with one Rakesh and was kept forcibly by them. Having come to know about this fact, petitioner has brought her minor daughter back to her house, who had disclosed that she was forcibly married against her wishes and consent, as she was sold to accused Rakesh for money by her grand-parents. However, when it was noticed that the victim is pregnant, she moved an application before the Superintendent of Police, Karnal, so as to take legal action against the accused and the FIR was registered. He submits that the petitioner is a legal guardian as defined under Section 2(a) of the Medical Termination of Pregnancy Act, 1971(hereinafter to be referred as “the Act”) as she has the care of the person who is minor. The victim being minor was not of marriageable age and even her consent is immaterial. He has submitted that in view of Section 3 of the Medical Termination of Pregnancy

*Act, Board be constituted so as to assess the case of the victim.
He refers to Section 3 of the Act, which reads as under:-*

“3. When pregnancies may be terminated by registered medical practitioners .(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners

are of opinion, formed in good faith, that--

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I. *Where any 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.*

Explanation II. *Where any pregnancy occurs as a result of failure of any device or method used by any married woman*

or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

Perusal of the relevant Section 2(a) and 3 along with explanation(1) to sub-section 2 shows that if pregnancy is outcome of the offence of rape, the same shall be presumed to constitute a grave injury to the mental health of the pregnant woman and the same is permissible to be terminated under the Act. Section 3(4)(a) provides that in case of termination of pregnancy of a woman who has not attained the age of 18 years, consent of guardian is required in writing. The present petition has been filed by mother of the victim, who is taking care of her minor daughter and therefore, is her guardian.

Vide order dated 14.02.2020, this Court had directed respondent No.2-Chief Medical Officer, Civil Hospital, Karnal, to appear in person, so as to assist in the case on 17.02.2020.

On February 17, 2020, when the matter was taken up for hearing, Dr. Ashwani Ahuja, Civil Surgeon, Karnal, had come present and this Court had directed the State to seek

assistance of some Gynecologist from General Hospital, Sector-6, Panchkula in the case.

Today Dr. Naresh, Deputy Chief Medical Officer, Karnal, is present in the Court and submits that the Community Hospital, Karnal, is not well-equipped with the infrastructure, which can evaluate feasibility of termination of pregnancy and to carry out the exercise of termination of pregnancy as at least two specialists i.e. two Gynecologists are required to conduct such procedure and therefore, it would be in the interest of the victim to get herself examined from a Multi Specialty Hospital or Institute like the PGIMER, Chandigarh.

Similarly, Dr. Poonam Bhargava, Gynecologist from General Hospital, Sector-6, Panchkula, is present in person. The victim, her mother and the doctor have been interacted at some length in the Chamber also. Dr. Poonam Bhargava submits that the pregnancy of a minor girl who is a rape victim, can be terminated after examining/evaluating her condition. The General Hospital, Sector-6, Panchkula, has the facility of such like termination as five Gynecologists are working there.

Accordingly, the victim is referred to the General Hospital, Sector-6, Panchkula and the Civil Surgeon/C.M.O. shall constitute a Board comprising of at least 03 Gynecologists/specialists in the matter so as to examine and submit the report regarding feasibility of termination of pregnancy of the victim, in the best interest of victim. As the pregnancy is about 23-24 weeks, therefore, at this stage expeditious examination to ascertain the feasibility of termination of pregnancy is required in the case.

Accordingly, ASI Suman, the Investigating Officer is directed to take the victim to General Hospital, Sector-6, Panchkula, where the concerned team of doctors/Board shall

assess the health condition of the victim and to form an opinion regarding termination of pregnancy at this stage. The Medical Board shall examine the condition of the girl and submit a report as to whether continuance of pregnancy would involve risk to life of mother(victim) or to the foetus and to examine state of physical and mental condition of victim and foetus.

Adjourned to 19.02.2020.

To be shown in the urgent list.

In order to perform such exercise, if any formality is required at the behest of minor, her mother who is also present in the Court shall accompany her and will extend necessary help for the examination/evaluation of the victim, including her consent in writing as required under Section 3(4)(a) of the Act. If Medical Board so constituted is of the opinion that admission of the victim is necessary, she shall be admitted in the hospital.

Since the victim is a minor girl and a rape victim, at this stage, the Deputy Commissioner, Panchkula, is hereby directed to extend financial help of `50,000/- to the mother of the victim forthwith, so that her treatment/procedure can be conducted without any financial hardships.

A copy of this order be given dasti to the learned State Counsel under the signatures of the Bench Secretary of this Court.”

Pursuant to the aforesaid order dated 18.02.2020, the victim in the case has been subjected to medical examination by the Board of Doctors in General Hospital, Sector-6, Panchkula and accordingly, a report dated 19.02.2020 has been produced before this Court, which reads as under:

The aforesaid report also contains the investigation reports of the patient as well. The report, which is signed by the concerned doctors of the Board, reads as under:

*“Pt. brought by police for medical examination by board
Case No.47 dt. 1.2.2020 u/s 6 POCSO Act, 9, 10, 11 Child
Protection Act P.S. Indri Karnal.*

*Patient Anjali, 15 yr F, UHID No.350011739903 is
Primigravida at 23+ weeks of pregnancy.*

On examination G.C. fair.

PR-84/mt BP-106/74 mmg

Chest cvs/NAD

P/A uterus size 22-24 weeks fetal parts palpable vt relaxed.

Investigation Reports:

Hb-8.2 gm%

BT-2’30”

CT-5’50”

RBS- 116 mg%

LFT-WNL

RFT-avnL (screat 2.8)

PTI-WNL

HIV /

HBsAG / NR

VDRL /

*In opinion of board, as patient is at high risk because of
young age, increase in period of gestation and associated
anaemia and deranged renal functions.*

*So, opinion of board of doctors from tertiary care hospital
is suggested.”*

On 19.02.2020, Dr. Sangeeta, who is heading the Department of Gynaecology, General Hospital, Sector-6, Panchkula was present in Court along with other associate doctors, who examined the victim, and stated that pursuant to the order dated 18.02.2020 passed by this Court, a Medical Board was constituted, and the victim was examined by the Board. She had submitted that as per the radiologist, the victim is pregnant between 22-24 weeks and there is a significant risk to the life of victim in continuing with the pregnancy as it is a teenage pregnancy. The Medical Board is also of the opinion that any surgical intervention, at this stage, would also carry the usual risk.

In view of the opinion of the Medical Board, General Hospital, Sector-6, Panchkula, where they have suggested tertiary care in the case, vide order dated 19.02.2020, this Court had referred the matter to the PGIMER, Chandigarh to examine the victim and foetus and to submit a report in the sealed cover by tomorrow i.e. 20.02.2020 by 03.30 P.M. It was further directed that the Board shall explain the risk, if any, to the petitioner and her daughter, who is victim in the case.

This Court had also requested Mr. Amit Jhanji, Advocate, who was on the panel of PGIMER, Chandigarh to assist in the case and he had produced a copy of an office order dated 05.09.2019 issued by the office of Medical Superintendent, Nursing Cell, wherein a Permanent Medical Board for Medication Termination of Pregnancy beyond 20 weeks has been constituted. ASI Gurbachan Singh, Police Station Indri, who was present in Court, was directed to take the victim to the office of Medical Superintendent, PGIMER, Chandigarh on 19.02.2020 itself for onward examination of the victim in the light of averments made in the petition.

Mr. Jhanji was directed to ensure that the victim would be taken care by the PGIMER in a prompt possible manner and in case the admission of the patient is required, she would be admitted forthwith.

Today, the report of Medical Board has been received from PGIMER, Chandigarh, which is signed by Prof. Rashmi Bagga as Chairperson, Dr. Raman Sharma as Convener as well as Prof. Kanya Mukhopadhyay, Dr. Kirti, Prof. Y.S. Bansal, Dr. Anupriya Kaur, Dr. Tulika Singh, Dr. Sahajal Dhooria, Dr. Manoj Goyal, Dr. Swapanjeet Sahoo, Dr.

G.S.R.S.N.K. Naidu and Dr. Himanshu Gupta as Members. The report is taken on record. The contents of report read as under:

“With reference to directions received from the Hon’ble High Court received in Medical Superintendent Office, PGIMER on dated 19.02.2020. The patient was medically evaluated by the permanent Medical Board at PGIMER, Chandigarh on dated 20.02.2020. Following are the observations of the Medical Board:

- 1. As per the ultrasound done on 20.02.2020, the period of gestation is 23 weeks and 6 days with a single live intra uterine fetus. No gross congenital anomaly seen. The foetal weight is 587 grams approximately.*
- 2. Physical examination shows the minor girl to be medically fit. Detailed psychiatric examination evaluation of the patient is suggestive of psychological distress due to ongoing stressors due to ongoing pregnancy at present.*
- 3. **Keeping in view the above, permanent Medical Board recommends medical termination of pregnancy at this stage.”***

There is a clear opinion given by the Permanent Medical Board, PGIMER, Chandigarh, whereby the Board has recommended medical termination of pregnancy at this stage. Therefore, there is no reason for this Court to deny the recommendations made by the Permanent Medical Board and the constitution of which was approved by the Director, PGIMER, Chandigarh.

Accordingly, in the light of the aforesaid report given by the Permanent Medical Board, PGIMER, Chandigarh as well as the law laid down by Hon’ble Supreme Court in ***Ms Chanchala Kumari v. Union of***

Inida: W.P.(C) 871/2017 and Venkatalakshmi v. The State of Karnataka; Civil Appeal No.15378/2017, whereby, in somewhat similar circumstances, the Apex Court had permitted termination of pregnancy even beyond the period of twenty-four weeks, the present petition is allowed and the Director, PGIMER, Chandigarh is requested to get the pregnancy of the victim (daughter of the petitioner) terminated under the supervision of the Head of Department (Obstetrics and Gynaecology), PGIMER, Chandigarh. The procedure of termination of pregnancy shall be carried out as expeditiously as possible and in the best interest of the victim.

The petitioner, who is mother of the minor-victim, is directed to ensure her complete assistance during the procedure.

The tissue of the foetus shall be preserved for further DNA test, as the same may be required by the police during investigation.

This Court has been informed that the victim-patient has been admitted in PGIMER, Chandigarh. The expenses so incurred on the procedure of termination of pregnancy shall be borne by the PGIMER, Chandigarh.

At this stage, learned State counsel has informed that in terms of order dated 18.02.2020 passed by this Court, the Deputy Commissioner, Panchkula has already sanctioned the amount of Rs.50,000/- in favour of the petitioner and directed the Red Cross Society to release the amount to the petitioner. However, in the absence of details of bank account of the petitioner, the said amount could not be released in favour of the petitioner.

Accordingly, the petitioner is directed to provide the details of her bank account to the Red Cross Society within seven days from today so as

to enable the Red Cross Society to transfer the amount of Rs.50,000/- in the bank account of the petitioner.

A copy of this order be given to Mr. Amit Jhanji, Advocate under the signatures of the Bench Secretary of this Court to ensure necessary and immediate compliance.

February 20, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No