

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2294 of 2021**

- ABC, D/o Lt. Tilak Ban Goswami, Aged About 27 Years R/o - Near Bogda Puliya Ward No. 57 Gram - Urla District - Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through - Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. The Chief Medical Officer, (C.M.O.) Medical Board Of District Hospital, Durg, Chhattisgarh
3. Head Officer Of Department Gynecologist, (H.O.D.) - Gynaic, District Hospital, Durg, Chhattisgarh.

---- Respondent

For Petitioner : Ms. Aditi Singhvi, Advocate

For Respondent/ State : Shri Alok Bakshi, Addl A.G.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****25.06.2021**

Heard

1. The present petition is seeking termination of pregnancy under the provisions of Medical Termination of Pregnancy Act, 1971 (for short Act of 1971).
2. Learned counsel for the petitioner would submit that the petitioner was subjected to rape for which an FIR was lodged on 09.05.2021 vide Annexure P-2 and the case was registered under sections 376, 376 (2) (ढ) by result of such rape she conceived. It is contended that if she is forced to continue the pregnancy which is caused by rape anguish would be caused and would eventually constitute a grave injury to the mental health of the pregnant

woman. She would further submit that the medical report of the victim (petitioner herein) would suggest that she was examined on 17.06.2021 by District Medical Board hospital, Durg and subsequently again on 23.06.2021 and the doctor have opined that she may under go Medical termination of pregnancy safely as she is 14 weeks 3 days pregnant.

3. Learned State counsel was directed to seek instructions and the case diary was called. He further submits that according to the case dairy 164 statement runs 6 pages, the victim has categorically stated about the rape resulting into pregnancy.
4. Heard learned counsel for the parties and perused the documents.
5. Section 3 of the Act of 1971 was amended recently by a notification on 25.03.2021 and the amended Section 3 of the Act of 1971 reads as under:-

"3. In section 3 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:-

“(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 twenty weeks, of such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1.- For the purpose of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.- For the purpose of clause (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms of the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purpose of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:-

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the

State Government or Union territory, as the case may be.”

6. Reading of the said section would show that the length of pregnancy can be terminated in opinion of registered medical practitioner formed in good faith that pregnancy would cause grave injury to physical and mental health of woman and where the length of pregnancy does not exceed twenty weeks.

Explanation 2 the same is prescribed wherein it is stated that the pregnancy which is caused by rape would presumed to cause grave injury to mental health of the pregnant woman. The fact of rape is also supported by the State that the victim was subjected to rape. The report of the District Medical Board shows that the opinion was formed that MPT can be safely done as the pregnancy is within a period of 20 weeks and the victim is mentally and physically fit for the medical termination of the pregnancy.

7. 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."

8. The explanation clause of Section 3 of Act of 1971 takes within its ambit not only the physical injury but also to mental injury and anguish. It is obvious that if the victim is subjected to rape and if she is forced to give birth to a child in the social scenario she has to face a life time anguish apart from the fact the child who is born will also have to face disdain of the society. Under the circumstances, it is directed that the petitioner shall be entitled to Medical termination of pregnancy. In order to carry out the pregnancy State shall form a panel of expert doctors at the District Hospital Durg as early as possible. The hospital shall take due care of the petitioner's health and provide her all medical support. It is further directed that the DNA of the child shall also be preserved considering the fact that the victim has already lodged a report under Section 373 which will eventually be required at a future date. The petitioner is directed to appear at District Hospital Durg on Wednesday i.e. 23.06.2021.
9. With the aforesaid observation, the petition stands allowed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti