

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1975 OF 2021

'X'

Since minor, through her mother
and natural legal guardian,
Mangal Shankar Katkar

... Petitioner

V/s.

State of Maharashtra

... Respondent

Mr.Kaustubh Gidh alongwith Mr.Kranti L.C. i/by Ms.Aditi Saxena,
Advocates for the Petitioner.

Ms.Shruti D. Vyas, 'B' Panel counsel for the Respondent.

**CORAM : UJJAL BHUYAN &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : JUNE 10, 2021.

P.C.:-

Heard learned counsel for the parties.

2. This petition has been filed by the mother of the victim girl under Article 226 of the Constitution of India for allowing the victim to undergo medical termination of pregnancy at the medical facility of her choice.

3. On 3rd June, 2021 this court had passed the following order:-

"1. This petition has been preferred on behalf of the minor alleged victim of sexual assault, who is 24 weeks and 6 days pregnant, as stated in the petition. The report is annexed at exhibit 'D' to the petition.

2. Considering the aforesaid, we request the Civil Surgeon, Civil Hospital at Satara to constitute a medical board as per the Medical Termination of Pregnancy Act, 1971 ('MTP Act') and to examine the alleged victim about the feasibility of medical termination of pregnancy under the Medical Termination of Pregnancy Act, 1971.

3. We are informed by the learned Counsel for the petitioner that the victim is presently in the custody of the Child Welfare Committee (CWC) at Satara. Accordingly, we direct the Child Welfare Committee, Satara, to produce the petitioner before the Civil Surgeon, Civil Hospital, Satara tomorrow i.e., 4th June, 2021 at 11 am for examination as per MTP Act.

4. The Civil Surgeon is requested to furnish a report in a sealed cover before this Court on or before 11am on 8th June, 2021.

5. We also request the learned AGP to communicate this order to the CWC at Satara as well as the Civil Surgeon, Civil Hospital, Satara.

6. List on 8th June, 2021 before the appropriate Court, second on Board."

4. On the next day i.e. on June 8, 2021 the report of the medical board was placed before the court. As per the medical report there is no anomaly in the fetus and the pregnancy should be continued. After noting that the victim is a minor and had suffered alleged sexual assault which would bring the case within the ambit of Explanation 1 to section 3 of the Medical Termination of Pregnancy Act, 1971, this court passed the following order:-

"3. Today when the matter is called upon, a report dated 05.06.2021 of the Civil Surgeon, Satara has been placed before us. As per the report, the gestational age of pregnancy is more than 24 weeks and that the mother is not having any medical or psychological issues at present. There is no anomaly in the fetus. Therefore, the Medical Board has opined that the pregnancy should be continued.

4. Learned counsel for the petitioner submits that petitioner is a minor and is a victim of sexual assault. Pregnancy is a result of such sexual assault. Presently petitioner is under the custody of Child Welfare Committee, Satara. According to him, present is a case

which comes within the ambit of Explanation I to section 3 of the Medical Termination of Pregnancy Act, 1971.

4. Before we pass final orders in the matter, we would like to have the views of the mother of the petitioner regarding continuance or otherwise of the pregnancy. The mother be allowed access to video conferencing facility through the aegis of the Child Welfare Committee, Satara. In the meanwhile, Ms. Vyas, learned AGP to obtain instructions regarding the present stage of investigation following lodging of first information dated 21.05.2021 at Pusegaon Police Station in the district of Satara. Copies of the medical report and this order be furnished to both learned counsel for the petitioner and Ms. Vyas, learned AGP.

5. List again on 10.06.2021."

5. Today when the matter is called upon, we had an interaction with the mother of the victim girl Mangal Shankar Katkar through video conferencing. She submitted that her daughter is a child and was subjected to sexual assault. She expressed the view that since the pregnancy is a result of the sexual assault, the same should be terminated.

6. Ms.Vyas, learned state counsel submits on the basis of instructions received that the accused has been arrested and is presently in judicial custody. Statements of the witnesses are being recorded. Blood and DNA samples of the accused have been collected and sent for forensic examination. However, investigating authority has made a request that blood and DNA samples of the mother and of the fetus should be preserved for further examination.

7. Having heard learned counsel for the parties and on due consideration, particularly having regard to Explanation 1 to section 3 of the Medical Termination of Pregnancy Act, 1971, we

allow the victim girl represented by her mother to abort the fetus by undergoing medical termination of pregnancy in the medical facility of her choice having requisite facilities. However, while doing so the medical authorities shall collect the blood and DNA samples of the mother and the fetus and forward the same to the investigating authority as and when requisitioned.

8. With the above directions, writ petition is disposed of.

(PRITHVIRAJ K. CHAVAN, J.)

(UJJAL BHUYAN, J.)

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