

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1696 OF 2021

ABC

... Petitioner

Vs.

- 1) State of Maharashtra
- 2) Shri Barik Mukunda Adagale
- 3) Senior Inspector of police
- 4) Sassoon General Hospital, Pune

... Respondents

Mr.Sandeep Bali for the Petitioner

Ms.Sangeeta Shinde, APP, for Respondent – State

**CORAM: S.S. SHINDE &
MANISH PITALE, JJ.**

DATED: APRIL 9, 2021

ORAL JUDGMENT (PER MANISH PITALE, J.):

1. By this Writ Petition, the petitioner, who is a minor girl, has approached this Court through her mother seeking a direction for medical termination of her pregnancy, which is beyond 20 weeks. Since the pregnancy is the result of an alleged sexual assault on the petitioner, a further prayer is made for a direction to the Investigating Officer in the concerned First Information Report to

ensure that DNA test is conducted for the purpose of evidence during the trial.

2. The petitioner has stated before this Court that she was forcibly sexually assaulted by the accused as a result of which she became pregnant. It was only when she suffered severe abdominal pain on 25th March, 2021 and she was taken to the hospital, that the said fact about pregnancy came to light. Thereafter, on 27th March, 2021, First Information Report No.95 of 2021 came to be registered with Mundhwa Police Station, Pune regarding the said incident for the offences punishable under sections 376 of the Indian Penal Code, under sections 4, 5(j)(ii) and 12 of the Protection of Children from Sexual Offences Act, 2012.

3. On 31st March, 2021, the petitioner was taken to Respondent No.4 Sassoon General Hospital, where it was confirmed that she was pregnant, yet, she was discharged.

4. It is at this stage that the petitioner filed the present Writ Petition seeking the aforesaid directions. Considering the urgency in the matter, on 7th April, 2021, this Court issued notices to the

respondents, specifically directing respondent No.4 – Dean of the Sassoon General Hospital, Pune to constitute a medical board for examination of the petitioner and submit a confidential report for termination of late term pregnancy. Accordingly, the said report is received.

5. The relevant portions of the said report show that Respondent No.4 constituted the medical board consisting of the following Members:

S.No.	Name	Designation	Specialization
1.	Dr.Muralidhar Tambe	Dean	PSM
2.	Dr.Ramesh Bwholesale	Prof. & Head of Department	Obst. & Gyn
3.	Dr.Ruchi N. Thakur	Associate Professor	Obst. & Gyn
4.	Dr.Shashikala Sangle	Prof. & Head of Department	Medicine
5.	Dr.Aarti Kinikar	Prof. & Head of Department	Paediatrics
6.	Dr.Shefali Pawar	Prof. & Head of Department	Radiology
7.	Dr.Krishna Kadam	Class I Psychiatrist	Psychiatry

6. It is also recorded in the report that the petitioner is about 16 years and 6 months old and that the reason for pregnancy is rape

that she suffered. It is then recorded that upon the Ultrasound Sonography and other examination, single live fetus of about 24 weeks maturity is found. The report specifically states that the petitioner is physically fit for termination of pregnancy and the recommendation of the medical board is at paragraph 16, which reads as follows:

“16. ...

a. Recommended – (if yes, please mention the methods)
– Yes. With medical methods and if required by surgical method.”

7. The key recommendations of the medical board read as follows:

“Key recommendations of the panel (if any) with justification:
On clinical and ultrasound examination mother has teenage pregnancy of 24 weeks +/- 2 weeks with single live intrauterine foetus and and no major medical and other obstetric complications. She is a victim of sexual assault. This history with pregnancy constitutes a grave injury to her mental health and teenage pregnancy additionally has higher morbidity and mortality.

Thus medical termination of pregnancy is recommended with kind permission of Hon’ble High Court.”

The report is signed by all the 7 members of the medical board.

8. Mr.Sandeep Bali, the learned Counsel appearing for the petitioner, submits that since the medical board has submitted the report favourably recommending the medical termination of pregnancy of the petitioner, the same may kindly be permitted and a further direction be given for preserving the tissue and blood samples of the fetus for DNA and other tests.

9. Ms.Shinde, the learned APP appearing for the Respondent – State, submitted that this Court may pass appropriate orders in terms of the recommendations of the medical board.

10. In a recent judgment of this Court in the case of *ABC versus State of Maharashtra & another (Criminal Writ Petition No.1267 of 2021 decided on 22nd March, 2021)*, the position of law in respect of such cases was taken note of and it was observed as follows:

“11. Before considering the facts of the present case and the prayers made in the present writ petition, it would be appropriate to refer to the relevant provisions of the Act of 1971 and the law laid down in that context. Sections, 3, 4 and 5 of the Act of 1971 provide for contingencies in which pregnancies may be terminated by registered medical practitioners. Section 3(2) provides that a pregnancy may be terminated by a registered medical practitioner where the length of the pregnancy does not exceed twelve weeks or 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 the opinion formed in good

faith that continuance of the pregnancy involves a risk to the life of the pregnant woman or it may cause grave injury to her physical or mental health. Explanation-1 to the aforesaid provision is of significance in the present case, because it specifically states that where any pregnancy is alleged 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.

12. It is clear from the said provision that termination of pregnancy can be carried out, if the contingencies mentioned in section 3 of the Act of 1971 are satisfied. But, since there is a limit of the length of pregnancy specified upto twenty weeks, termination of pregnancy whose length is beyond twenty weeks needs to be considered in the facts and circumstances in the present case. In the case of the **Rubina Kasam Phansopkar** (*supra*), this Court took note of the position of law that in certain cases Superior Courts could direct medical termination of pregnancy whose length is beyond twenty weeks. In order to do so, the Court is required to call for a report from a committee duly constituted to examine the question as to whether a pregnancy beyond twenty weeks could be permitted to be terminated. In the said case, after having recognized such settled position of law that a Constitutional Court while exercising writ jurisdiction could grant such permission, after calling for report from Medical Board comprising of suitably qualified doctors, on the facts of the said case this Court declined to grant permission for termination of the pregnancy. Nonetheless, the power available with this Court to grant such permission was recognized.

13. In the case of “**ABC**” through her Guardian (*supra*), in a similar situation, where the victim person was a minor girl and victim of rape, this Court called for a report from a committee of doctors of the Government Medical College and upon recommendation of such committee for medical termination of pregnancy passed an order allowing the writ petition. Similarly, in the case of **Pramod A Solanke** (*supra*), this Court after calling for report of a Medical Board permitted termination of pregnancy which was twenty four weeks and three days of length. In the said case also the pregnant girl was minor and a victim of rape. In the case of **Sangita Sandip Dahilkar** (*supra*) also, this Court granted permission for medical termination of pregnancy the length of which was beyond twenty weeks after calling for report from a committee which recommended such termination of pregnancy.”

11. In view of the above, it is clear that as per the settled position of law, in specific circumstances, after awaiting for the report from the medical board, the constitutional Court has power under writ jurisdiction to direct termination of pregnancy, the length of which is beyond 20 weeks. It is laid down that when such termination of pregnancy is for the mental and physical health of the victim, this Court can give appropriate directions. A perusal of the above quoted recommendations of the medical board in the present case shows that the pregnancy itself has been observed to constitute grave injury to the mental health of the petitioner, as she is a teenager who has suffered the alleged forcible sexual assault.

12. In view of the above, we find that the present case is a fit case for granting appropriate directions as sought in the Writ Petition.

13. Since the pregnancy of the petitioner is as a consequence of the alleged forcible sexual assault, it is necessary to give consequential directions in the matter to ensure that the tissue and blood samples of the fetus, upon medical termination of

pregnancy, are preserved for DNA and other tests, so that the result of such tests can be utilised in evidence during the trial pursuant to the aforesaid First Information Report.

14. Apart from this, another aspect of the matter is that the respondent – State has framed a Scheme under the Government Resolution dated 1st August, 2017 called “the Manodhairya Scheme”. This in tune with the compensation contemplated under section 357A of the Code of Criminal Procedure. The said Government Resolution provides for payment of compensation to minors like the petitioner herein who have suffered forcible sexual assault. In the facts and circumstances of the present case, further appropriate direction needs to be given so that the petitioner also gets benefit of the said scheme framed by the State.

15. In view of the above, the Writ Petition is allowed in the following terms:

- i) Respondent No.4 – Sassoon General Hospital, Pune (through Dean), is directed to medically terminate the pregnancy of the petitioner at Sassoon General Hospital,

Pune, forthwith and in any case, on or before tomorrow i.e., 10th April, 2021.

ii) Respondent No.3 – Senior Inspector of Police, 4Mundhwa Police Station, Pune, is directed to ensure that the tissue and blood samples of the fetus are collected for conducting DNA and other tests by forwarding the same to the concerned Forensic Laboratory. The said samples and reports shall be preserved for the purpose of trial.

iii) Respondent No.1 is directed to immediately place the First Information Report, the medical report and other papers including the statement of the petitioner under section 164 of the Code of Criminal Procedure before the District legal Services Authority for payment of amount to her under the Government Resolution dated 1st August, 2017 i.e., “The Manodhairya Scheme”.

iv) Upon receipt of such papers, the District Legal Services Authority is directed to immediately process the said papers for payment of compensation to the petitioner at various stages as contemplated under the aforesaid

Scheme. It shall be ensured that such payments are made at the earliest without any delay in the matter.

16. Rule is made absolute in the above terms.

17. All concerned persons shall act on an authenticated copy of this order.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)