

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.396/2021

Ku. Apurva d/o Ganesh Mathe,
aged about 24 years, Occ. Student,
r/o Empress Mill No.1, Santra Market,
Nagpur.

.....PETITIONER

...V E R S U S...

1. The Principal Secretary,
Maharashtra Public Health Department,
Mantralaya, Mumbai-32.
2. The Commissioner of Police,
Nagpur Division, Nagpur,
Civil Lines, Nagpur.
3. The Police Inspector,
Police Station, Ganeshpeth,
Dist. Nagpur.
4. The Dean,
Indira Gandhi Medical College and
Hospital, C.A. Road, Nagpur.

...RESPONDENTS

Mr. Ashwin Wasnik, Advocate for petitioner.
Mr. S. M. Ghodeswar, A.P.P. for respondents-State.

CORAM : V.M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATED : JUNE 18, 2021

ORAL JUDGMENT (Per: V. M. Deshpande, J.)

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties. Heard Mr. Wasnik,

learned counsel for petitioner and Mr. Ghodeswar, learned A.P.P. for respondents-State. Also perused the report submitted by the committee, in view of order dated 10.06.2021 passed by this Court. It is taken on record and marked "X" for the purpose of identification.

2. By this writ petition, the petitioner is praying for the following reliefs.

(A) Issue a writ, order or direction thereby directing the Respondent no.1 to 4 to terminate the pregnancy of the petitioner by following the due procedure of law.

3. It is stated by the petitioner that she was sexually assaulted by one Avinash Dondiram Bhimte. She, therefore, lodged an FIR with Police Station, Ganeshpeth on 04.05.2021. Since the report lodged by the petitioner was disclosing commission of a cognizable offence, the Police Station Officer of the said Police Station registered an offence under Sections 376 (2) (1), 417 and 323 of the Indian Penal Code against Avinash Bhimte. The investigation is still in progress.

4. Mr. Wasnik, learned counsel for the petitioner, submits that Police Station Officer, Ganeshpeth arrested accused Avinash and as on today, he is in jail.

5. According to the petitioner, the sexual assault was against her wish by the accused and due to that she has conceived. From the intimation letter dated 18.05.2021, which is placed on record at page no. 15 of the compilation of this writ petition, it is clear that on 05.05.2021, after registration of the offence, the petitioner was medically examined at Mayo Hospital and that time, the Medical Officer gave a written opinion that she is carrying 13 weeks pregnancy. The petitioner's supplementary statement was also recorded on 05.05.2021 in which she did state that she is not ready to carry the pregnancy.

6. This writ petition was listed on 10.06.2021. On the said day, Court observed to determine as to whether it is feasible to terminate the pregnancy and for that purpose, a report from the Medical Board was called. Accordingly, respondent no.4-Dean, Indira Gandhi Medical College and Hospital, Nagpur constituted a committee under the chairmanship of Dr. Prashant Ukey, Professor

and HOD of Department of Obstetrics & Gynaecology, Dr. Alka Patankar, Associate Professor, Dr. Kshma Kedar, Associate Professor and Dr. Sachin Wankhede, Associate Professor. The said Committee examined the petitioner and gave its report to this Court through Mr. Ghodeswar, learned A.P.P., which is taken on record at Exh.-X. The Committee's report expresses following opinion.

“Committee's opinion:

1. Medical termination of pregnancy (MTP) can be done with due risk, as gestational age (17 weeks 6 days) falls well within permissible limit of medical termination of pregnancy act.
- 2 Before undergoing MTP, necessary blood and radiological investigations and fitness from physician and anesthetist will be required.”

From the aforesaid, it is crystal clear that the medical experts recommended the termination of pregnancy.

7. In view of the experts' opinion, the writ petition is allowed. The petitioner is permitted to terminate her pregnancy. The termination of her pregnancy shall be done at Indira Gandhi Government Medical College and Hospital, Nagpur on 21.06.2021. The respondent no.4 shall ensure the due care at the time of

process and shall keep all the emergency services available during the process to take care of the petitioner.

8. Respondent no.4 is also directed to ensure that blood samples and tissues of foetus are duly preserved since it will be medical evidence in the criminal case. The blood sample of the petitioner shall also be collected.

9. The learned A.P.P. is directed to communicate this order to the respondent no.4.

10. Parties to act upon the authenticated copy of this judgment.

Rule is made absolute in the above terms.

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