

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.5113 of 2021

R.Kalpana

...Petitioner

Vs

1.The Dean,
Government Maternity Hospital,
Egmore, Chennai - 600 008.

2.State rep. by its,
The Inspector of Police,
AWPS - Police Station,
Sriperumbudur, Kancheepuram District.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the 1st respondent to terminate the pregnancy of the petitioner's minor daughter aged about 15 years namely "X" D/o. Ramesh within the time frame fixed by this Court.

For petitioner ... Mr.S.Suresh

For Respondents ... Mr.V.Shanmuga Sundar,
Special Government Pleader

ORDER

The instant case has been filed by a desperate mother of a victim girl seeking for medical termination of her minor daughter's pregnancy. The rape victim girl X was impregnated by the accused who has been charged with the offence in Crime No.1 of 2021 under section 450, 376(3) and 506(ii) of IPC read with section 4(2) and 8 of POCSO Act, 2012.

2. In the affidavit filed in support of this writ petition, the petitioner has stated that the minor victim girl is 5 months pregnant. This Court by its earlier order dated 03.03.2021 directed the first respondent to nominate a team of Doctors and medically examine the victim girl and submit a feasibility report with regard to the medical termination of her pregnancy. As directed by this Court, the first respondent has nominated a team of Doctors who have medically examined the rape victim girl and have filed an unanimous report before this Court on 06.03.2021. The said report dated 06.03.2021 has been submitted

by the Doctors stating that the victim girl X is about 26 weeks pregnant and their recommendations have also been given. The relevant portions of the medical report dated 06.03.2021 reads as follows:

"15. Physical fitness for termination : Yes
16. Recommendation by committee for termination (choose one and provide any additional recommendations of the panel in the box below (if any)):

(a) Recommended - Yes

Key recommendations of the panel with justification:

"For inpatient management / MTP by medical methods to encourage spontaneous expulsion. As the pregnancy is in the late second trimester, if medical methods fail may require a surgical method - namely hysterotomy."

3. Two of the Doctors namely Dr.J.Srimathi, Project Officer, Department of Family Planning, Government Hospital for Women & Children, Egmore and Dr.N.Tamil Selvi, Deputy Director, IOG, Government Hospital for Women & Children, Egmore, Chennai -8 who had examined the victim girl are physically present before this Court today and submitted that the rape victim is only 14 years old and small statured and not strong enough to withstand the pregnancy and hence, it is advisable to medically terminate her pregnancy. They also submitted that the rape victim is mentally weak and not in a position to deliver a child at such a young age.

4. Section 3 of the Medical Termination of Pregnancy Act, 1971 deals with cases when pregnancy may be terminated by medical Practitioners and it reads as follows:

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.

5. Here is a case where the length of pregnancy of the victim girl has exceeded 20 weeks i.e., presently it is 26 weeks.

6. The Hon'ble Supreme Court in the case of A vs. Union of India reported in (2018) 4 SCC 75 permitted termination in a case where the gestational age was 25-26 weeks. In Murugan Nayakkar vs. Union of India reported in 2017 SCC Online SC 1092, the Hon'ble Supreme Court once again allowed termination of pregnancy in the case of 13 year old child and in Sarmishtha Chakraborty vs. Union of India reported in (2018) 13 SCC 339 permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendations of the medical board.

7. Similarly, in the case of Meera Santosh Pal vs. Union of India reported in 2017 3 SCC 462 permission for medical termination of pregnancy was granted when the pregnancy crossed 24 weeks, based on the medical reports pointing out the risk involved in the continuation of pregnancy. The Kerala High Court in the case of Neethu Narendran vs. State of Kerala reported in 2020 (3) KHC 157 has also permitted termination of pregnancy when the gestation age crossed 23 weeks.

8. The aforesaid decisions were followed by a learned Single Judge of this Court who permitted the medical termination of pregnancy of a rape victim whose gestation age was between 10 to 11 weeks in the case of Mahalakshmi vs. District Collector and others in his decision dated 19.01.2021 in W.P.(MD).No.659 of 2021.

9. The two Doctors who were present before this Court today have also submitted that considering the physical and mental state of mind of the victim, it is advisable for early termination of her pregnancy. The medical report dated 06.03.2021 placed before this court also reveals that termination of victim's pregnancy can be done either by spontaneous expulsion or if it is not possible through surgical methods i.e., hysterotomy.

10. From the aforementioned decisions, it is clear that even in cases where the length of pregnancy has exceeded 20 weeks, this Court is having power to order for termination of pregnancy of the victim girl on the ground of grave danger to her physical and mental health.

11. Section 3 of the Medical Termination of Pregnancy Act, 1971 deals with cases for medical termination of pregnancy without intervention of the Court. Without intervention of the Court, a Registered Medical Practitioner can terminate the pregnancy in the circumstances mentioned in section 3(2) of the Medical Termination of Pregnancy Act, 1971. While exercising powers under Article 226 of the Constitution of India, this Court has got wider powers than what is prescribed under section 3(2) of the Medical Termination of Pregnancy Act, 1971 which permits the registered medical practitioner to terminate the pregnancy only when the length of pregnancy does not exceed a maximum period of twenty weeks. In the case on hand, the victim girl is 26 weeks pregnant. However, considering the fact that the medical report recommends termination of her pregnancy and after giving due consideration to the fact that the victim girl is small statured and is only 15 years old, this Court exercising powers under Article 226 of the Constitution of India has got the powers to take judicial notice of those facts and can permit termination of victim's pregnancy. As observed earlier, the victim is also not physically and mentally strong to withstand the pregnancy and this Court has taken into consideration the said factor also.

12. Apart from the above reasons, this Court is also taking judicial notice of the fact that the petitioner and her husband are agricultural labourers and surviving on hand to mouth existence. They admittedly belong to the below poverty line category. If the minor victim girl is allowed to deliver a child, not only the victim but also her parents will suffer. The petitioner has also stated that she came to know about her minor daughter's pregnancy only after coming to know that she did not get her menses for the past five months.

13. For the foregoing reasons, this court is of the considered view that the petitioner is entitled to obtain a direction from this Court to the first respondent to terminate the pregnancy of her minor daughter X, aged 15 years approximately forthwith.

14. Accordingly, this Court directs the first respondent to nominate a specialist Doctor on 20.03.2021 who shall terminate the pregnancy of the petitioner's minor daughter X aged 15 years within three days from the date of the said nomination.

However, after terminating the victim's pregnancy, the first respondent shall preserve the foetus for carrying out the medical test for the purpose of criminal case pending against the accused in the Crime No.1 of 2021 for the offence under section 450, 376(3) and 506(ii) of IPC read with section 4(2) and 8 of POCSO Act, 2012.

15. With the aforesaid direction, this writ petition is disposed of. No costs.

16. Post the matter for reporting compliance on 26.03.2021.

s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

nl
To

1. The Dean,
Government Maternity Hospital,
Egmore, Chennai - 600 008.
2. The Inspector of Police,
AWPS - Police Station,
Sriperumbudur, Kancheepuram District.

Copy to
The Section Officer
Writ Section
High Court, Madras 104.

+1 CC to Mr.S.Suresh, Advocate sr 16462.

W.P. No.5113 of 2021

JP(CO)
SP(18/03/2021)

WEB COPY