

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-6782-2021 (O&M)
Date of decision: 26.03.2021

MANSI THROUGH HER MOTHER AND NATURAL GUARDIAN
KRISHNA ...Petitioner

Versus

STATE OF HARYANA AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Arpandeeep Narula, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

ANIL KSHETARPAL, J. (Oral)

The petitioner is alleged to be a rape survivor. She lodged an FIR No.15 dated 15.03.2021 under Section 363/366-A/376 of the Indian Penal Code, 1860, Section 3(1)(W)(i) of the SC & ST Act and Section 4 of the POCSO Act, 2012.

The petitioner through her mother has filed this writ petition for issuing a direction to respondent No.4 and 5 to terminate her pregnancy.

On 23.03.2021, the Medical Board of PGIMS, Rohtak, was directed to medically examine the petitioner and furnish a report. It has been reported that although the foetus has no congenital anomaly, however, the patient is anemic.

Since this petition was filed through the mother (natural guardian) therefore, it was considered appropriate to independently find out the stand of the petitioner. Accordingly, the Presiding Judge of Family Court, Rohtak, was requested to interact with the minor petitioner and

forward a report in this regard. A report has been sent by the Presiding Judge, Rohtak, after recording the statement of the petitioner wherein she has stated that she is willing to get the foetus aborted.

No doubt, The Medical Termination of Pregnancy Act, 1971, provides that the medical termination of pregnancy after a period of 20 weeks is not permissible. However, the Medical Termination of Pregnancy (Amendment) Act, 2020, has been passed on 25.03.2021 as per which the upper limit of medical termination of pregnancy has been extended to 24 weeks from the present stipulation of 20 weeks, for certain categories of women which includes rape victims. The petitioner in the present case falls in the purview of the new provision.

Even otherwise, the Court is required to take into consideration the peculiar facts of each case. As noted above, the petitioner claims to have become pregnant on account of rape. She is still a minor as she was born on 15.12.2003. She has her entire life ahead.

The Hon'ble Supreme Court as well as the Hon'ble Judges of the various High Courts have been permitting medical termination of pregnancy even after the expiry of 20 weeks under special circumstances. A reference in this regard can be made to the following judgments:-

- 1. 'X' v. The State of Maharashtra, 2020(1) AIR Bom.R (Cri) 335**
- 2. ABC v. Union of India and others, 2020(2) ILR (Kerala) 134**
- 3. State of Rajasthan, thr. Chief Secretary and others v. S (Name withheld) (the petitioner), 2020**

AIR (Rajasthan) 97

4. Suchita Srivastava and another v. Chandigarh Administration, (2009) 9 SCC 1

5. Sarmishtha Chakraborty and another v. Union of India and others, (2018) 13 SCC 339

With regard to the second prayer of preserving the foetus for purpose of DNA testing, a direction is issued to the Medical Board to draw a sample for DNA analysis and handover the same to the prosecution/police.

Keeping in view the aforesaid facts, this petition is disposed of by directing the Medical Board, PGIMS, Rohtak, to examine whether there is any risk to the life of the petitioner in carrying out the termination of pregnancy. If the Board comes to a conclusion that there is no risk to the life of the petitioner, then the Medical Superintendent, PGIMS, Rohtak, will make immediate arrangements for the medical termination of the pregnancy of the minor petitioner.

26.03.2021

ashok

Whether speaking/reasoned:

Whether reportable:

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No