

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4612 of 2022

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Miss K Through Her Mother (pseudoname) D/o - Smt. Basanti Devi R/o - Village - Patwara, Post - Patpara, Ward No. - 11, PS - Rajnagar, Dis-Madhubani, State - Bihar, Pin - 847235.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Secretary, Health Department, Government of Bihar, Patna.
3. The District Magistrate, Madhubani.
4. The District Magistrate, Darbhanga.
5. The Superintendent of Police, Madhubani.
6. The Superintendent, Darbhanga Medical College and Hospital, Laheriasarai, Darbhanga, Bihar - 846003.
7. The Superintendent, Madhubani Medical College and Hospital, Madhubani - Pasndaul- Sakri Rd. Keshopur, Bihar 847212.
8. The Chief Medical Officer, Madhubani.
9. The Civil Surgeon, Madhubani.
10. The In - Charge, Sadar Hospital Madhubani, Pargati Nagar, Madhubani, Bihar - 847211.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivam Kumar Pandey, Advocate Mr. Abhishek Anand, Advocate
For the State	:	Mr. Ajay Behari Sinha, Sr. Advocate GA-8 Mr. Upendra Kumar Singh, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

ORAL

Date : 11-04-2022

Heard learned counsel for the parties concerned.

2. The present writ application has been filed for a direction to the Respondent authorities to facilitate the medical termination of pregnancy of the minor daughter of the



petitioner inasmuch as according to the petitioner, she is the victim of sexual abuse and is carrying the pregnancy of about 13 weeks.

3. Learned counsel for the petitioner submits that petitioner's daughter is a minor girl aged about 16 years nine months and was kidnapped by the accused person namely, Ajay Kumar Pal and was kept under illegal confinement by the accused persons and after filing the *habeas corpus* petition by the petitioner being Cr.W.J.C. No. 86 of 2022, the daughter of the petitioner was recovered. Learned counsel further submits that the victim was medically examined and the Doctor has opined that victim girl is having a pregnancy of nine weeks at the time of her medical examination as on 11.3.2022.

4. Learned counsel referring to Section 3 of the Medical Termination of Pregnancy Act, 1971 submits that as per Section 3(b)(i)(ii) Explanation 2, the termination of pregnancy of the petitioner is permitted inasmuch as the minor, being a rape victim, is fulfilling the conditions specified under the Medical Termination of Pregnancy Act, 1971. He further submits that the Hon'ble Apex Court, in the



case of *Suchita Srivastava and Another v. Chandigarh Administration*, reported in (2009) 9 SCC Page 1, has held, in paragraph-22, as follows:-

“22. There is no doubt that woman’s right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as woman’s right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman’s entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a “compelling State interest” in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable



restrictions that have been placed on the exercise of reproductive choices”

5. The Hon’ble Supreme Court in the aforesaid judgment has held that woman’s right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India and the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. He also relied upon a judgment of Delhi High Court in a case of *X Vs. Govt. of NCT of Delhi & Anr. {W.P. (CRL) 2008/2013}* in which Delhi High Court, relying upon the case of *Suchita Srivastava (supra)*, has allowed the medical termination of the petitioner by two Medical Practitioners in accordance with Section 3 of the MTP Act, 1971. Learned counsel next submits that the petitioner is mother of the victim girl and as per Section 3(4)(a) of the MTP Act, 1971, she is ready and willing to give the consent in writing before the registered Medical Practitioner at the time of termination of pregnancy of the victim girl.

6. On the other hand, Mr. Ajay Behari Sinha, learned senior counsel for the State has filed counter affidavit



bringing on record the report of the Medical Board of the victim girl annexed as Annexure-B to the counter affidavit and submits that as per the Medical Board, the age of the victim is 19 years and she was found pregnant with 9 weeks 0 day pregnancy as on 11.3.2022 and as of today, the pregnancy of the victim girl is about 13 weeks. Accordingly, the length of pregnancy is not exceeding 20 weeks and the same can be terminated with the consent of the mother of the victim by the two registered Medical Practitioners.

7. I have heard learned counsel for the parties concerned.

8. From a plain reading of the provisions of the Medical Termination of Pregnancy Act, 1971, particularly, Section 3 of the Act, it appears that with the consent of pregnant woman or the guardian in case of minor, the pregnancy can be terminated by two registered Medical Practitioners, where the length of pregnancy does not exceed 24 weeks. The petitioner being the mother of the victim girl claims that the victim girl is a minor and she is ready and willing to give her written consent for termination of pregnancy.



9. In the case of **Delhi High Court** (supra), relied upon by the petitioner, the Delhi High Court, relying upon the judgment of the Supreme Court, in the case of ***Suchita Srivastava (supra)***, has held that to carry a child in her womb by a woman as a result of conception through an act of rape is extremely traumatic, humiliating and psychologically devastating, and, accordingly, directed for termination of pregnancy of the victim. The fact of the present case is also similar inasmuch as the minor, Miss. K, is claiming to be a rape victim at the hands of the accused person in Rajnagar Police Station Case No. 338 of 2021 and age of the pregnancy is within the time stipulated under Section 3(b) of the Medical Termination of Pregnancy Act, 1971, the petitioner is not ready to give birth to a child and the mother of the minor, Miss. K., is ready to give her written consent for termination of pregnancy of minor Miss K.

10. Accordingly, for the aforesaid reasons, this writ application is allowed. The petitioner/guardian is directed to accompany the victim Miss. K. and to produce her before the Superintendent, Darbhanga Medical College and Hospital, Laheriasarai, Darbhanga (Respondent No. 6) by 16th April,



2022, where Miss. K., through her mother, had approached earlier and had deposited the fee to get her pregnancy terminated. If the victim, Miss K., along with her mother, reports to the Superintendent, Darbhanga Medical College and Hospital, it is directed that a board of two registered Medical Practitioners shall be constituted by the Superintendent, Darbhanga Medical College and Hospital, Laheriasarai, Darbhanga, forthwith, which will take a decision immediately for termination of the pregnancy of the victim, Miss K., and the same will be terminated in accordance with the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971.

11. With this observation and direction, this writ application stands disposed of.

12. Let a copy of this order be communicated to the Superintendent, Darbhanga Medical College and Hospital, Laheriasarai, Darbhanga, through fax/email, immediately.

(Anil Kumar Sinha, J.)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11-04-2022
Transmission Date	N/A

