

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5960 of 2022

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ABC Daughter of Ram Dayal Sah, Resident of Village - Mubarakpur, P.S. - Musrigharari, District - Samastipur through her father Ram Dayal Sah, aged about 34 years, Male, Resident of Village - Mubarakpur, P.S. - Musrigharari, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Home, Government of Bihar, Patna.
4. The Principal Secretary, Department of Health, Government of Bihar, Patna.
5. The District Magistrate, Collectorate, Samastipur.
6. The Superintending of Police, Samastipur.
7. Member Secretary, Bihar State Legal Service Authority, Budh Marg, Opp. Museum, Cental Revenue Colony, Lodipur, Patna.
8. The Director, All India Institute of Medical Sciences, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abu Nasar, Mr. Zeya Ismail, Mr. Atul Kumar Jha, Advocates
For the Respondent/s	:	Mr. Binay Kumar Pandey, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT/ORDER

6. **17-05-2022**

The petitioner/ABC is a rape survivor who is minor aged about 16 years has preferred the present writ application through her father seeking the medical termination of unwanted pregnancy.

2. The brief facts of the case is that the victim/petitioner aged about 16 years resided in Mubarakpur village at Samastipur with her mother, brother and sister while her father was living in Hyderabad in order to earn his



livelihood as daily wager. On 03.03.2022, the victim lodged an FIR bearing Women PS Case No.13/2022 under Sections 376, 341, 323 and 506 of the IPC and Section 7 of Protection of Children from Sexual Offences Act at Mahila Police Station, Samastipur alleging therein that the accused person named in the FIR abused her sexually for the last many months. Thereafter, she started keeping unwell with complications like vomiting, stomachache etc. When the father of the victim arrived in the village and the family members noticed some abnormality in the activity of the girl, she disclosed the fact that she was being sexually abused and raped by the accused person named in the FIR. A pregnancy test was conducted by the family members through pregnancy test kit in which she was found pregnant. The father of the victim went to the house of accused person on 25.02.2022 to inquire about the incident and the accused told the victim's father that he would facilitate the abortion of the victim girl. After registration of the FIR on 03.03.2022, statement of the victim girl was recorded under Section 164 of the CrPC on 05.03.2022. On 04.04.2022 i.e., one month after lodging of the FIR an application under Section 3 of the Medical Termination of Pregnancy Act, 1971 (for brevity, 'MTP') was filed before the court of learned Additional



Sessions Judge-VI-cum-Special Court (POCSO), Samastipur on behalf of the victim girl for medical termination of the pregnancy of the victim girl. The learned Additional Sessions Judge-VI-cum-Special Court (POCSO), Samastipur directed the Child Welfare Committee, Samastipur to take appropriate action in the best interest of the victim. In compliance of the aforesaid order, Child Welfare Committee, Samastipur directed the Medical Superintendent, Sadar Hospital, Samastipur to constitute the Medical Board with a direction to submit its report at the earliest.

3. The report of the Medical Board was produced before the Special Court through the Child Welfare Committee *vide* CWC letter No. 182/22 dated 11.04.2022. The Medical Board found that the age of the foetus was of 26 ± 2 weeks and opined that if the medical termination is done at this stage, there is a possibility of ante-portem or post portem haemorrhage of the victim as well as foetus. Relying upon the opinion of the Medical Board, learned Special Court (POCSO), Samastipur rejected the application of the victim *vide* order dated 12.04.2022 (Annexure-2).

4. Thereafter, the petitioner filed the present writ application on 20.04.2022 and the Registry of this Court



directed for expeditious registration and listing of the case and upon urgent motion made by the learned counsel for the petitioner on 25.04.2022, the writ application was ordered to be listed on priority basis and accordingly, the case came on my board on 27.04.2022. On 27.04.2022 itself, upon hearing the submissions advanced on behalf of the learned counsel for the petitioner as well as State, I directed for constitution of seven members Medical Board consisting of the following doctors to examine the victim/petitioner and her foetus at AIIMS, Patna:-

(I) PROF. (DR.) SAURABH VARSHNEY, Director,
A.I.I.M.S., Patna

(II) DR. HEMALI HEIDI SINHA Professor & Head
of Department, Obstetric & Gynaecology

(III) DR. MUKTA AGARWAL Additional Professor,
Department of Obstetrics & Gynaecology

(IV) DR. PANKAJ KUMAR, Additional Professor &
Head of Department, Psychiatry

(V) DR. LOKESH KUMAR TIWARI, Additional
Professor & Head of Department, Paediatrics

(VI) DR. GITA SINHA, Head of Gynaecology
P.M.C.H.

(VII) DR. RENU ROHATGI, Head of Gynaecology,
N.M.C.H.

5. The Medical Board was requested to examine the minor petitioner and to submit its evaluation report of the victim/petitioner and the foetus to this Court on or before 5th



May, 2022 in a sealed cover. On 05.05.2022, on the request of learned counsel for the parties, the opinion of the Medical Board was handed over to the leaned counsel for the petitioner and petition was finally heard on 12.05.2022.

6. Upon perusal of the medical examination report of the victim/petitioner submitted by the seven eminent doctors in their respective field including HOD, Psychiatry, AIIMS, Patna, it appears that the physical examination, psychiatric examination and mental health evaluation of the victim was conducted by the doctors who in their medical report recorded the findings and conclusion which are as follows:-

1. Physical examination was conducted after assent:

General condition of the victim is fair and is conscious and oriented. On initial triaging her psychological categorization was stable. Her vital were stable. She had mild pallor. On systematic examination her respiratory, circulatory, neurological and gastrointestinal system were normal. On abdominal examination, she had uterine enlargement of approximately 30-32 weeks pregnancy, fetal heart sounds are heard. Detailed obstetric examination was done by the OBG consultants. This is a 16 year old pregnant adolescent female with high risk pregnancy (teenage) with mild anemia.

2. Obstetric examination:



First day of last menstrual period-petitioner unable to recall. On abdominal examination, uterus 32 weeks. Fetal heart sound present. On ultrasonography, a single live intrauterine fetus of 30 weeks 4 days with cephalic presentation and estimated fetal weight of 1546 gms.

3. Mental Health Evaluation:

Based on the cross-sectional evaluation, there is no evidence of any gross abnormalities or psychopathology indicative of any significant Mental illness at present. There is however need for supportive counseling and needful psychosocial interventions to mitigate the psychological impact of Trauma.

Conclusion: 16 years old girl with 32 weeks pregnancy (high risk in view of teen age) with nutritional anemia with fetus in good condition.

As per the opinion of medical board comprised of Pediatrician, obstetrician & Psychiatrist Termination is not medically indicated at this period of gestation. The fetus is alive and will be live born with complication of pre-maturity. Iron and calcium supplementation should be given as advised.

Sd/
Prof. Hemali H. Sinha
HOD, OBG, AIIMS, Patna.

Sd/
Prof. Amrita Sharan
HOD Incharge, OBG
PMCH, Patna

Sd/
Prof. Renu Rohtagi
HOD, OBG, AIIMS
Patna

Sd/
Dr. Lokesh Tiwari
HOD Pediatrics
AIIMS, Patna

Sd/
Dr. Pankaj Kumar
HOD Psychiatry
AIIMS, Patna

Sd/
Dr. Mukta Agarwal
Additional Professor OBG
Member Secretary

Sd/-
Prof. (Dr.) Saurabh Varshney,
Director, AIIMS, Patna Chairman

7. The Medical Board found that the victim/petitioner is carrying 32 weeks pregnancy and opined that termination is



not medically indicated at this period of gestation. The foetus is alive and will be live born with complication of pre-maturity.

8. Mr. Abu Nasar, learned counsel for the petitioner submits that in view of the opinion of the Medical Board in which the doctors have opined that termination is not medically indicative/viable at this stage of the 32 weeks of pregnancy, he is not pressing the prayer for medical termination of pregnancy. However, he alternatively, submitted that the FIR was lodged on 03.03.2022 disclosing the unwanted pregnancy carried by the victim but the police authority did not inform the Child Welfare Committee (in short 'CWC'), Samastipur as required under Section 31(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the J.J. Act'). The J.J. Act casts statutory obligation upon the police and other authorities to produce the child in need of care and protection before the CWC. Similar provision is also there in the Protection of Children from Sexual Offences Act, 2012 (POCSO). Section 19(6) of the POCSO Act stipulates that the Special Juvenile Unit or local police shall without unnecessary delay but within the period of 24 hours report the matter to the Children Welfare Committee and the Special Court where no Special Court is designated, to the Court of Sessions, including need of the child



for care and protection and steps taken in this regard. Provisions of Section 19(6) also casts legal obligation on the police authority to inform the relevant authority immediately after the police authority came to know that offence under POCSO Act has been committed. The police authority failed to discharge their legal obligation casts under the statute and if the information regarding unwanted pregnancy carried by the victim/petitioner had been given to the Child Welfare Committee immediately by the police, the victim would not have suffered trauma and mental agony of carrying an unwanted pregnancy and to give birth to a child which is the result of a crime of rape.

9. In view of the unanimous opinion of the Medical Board, learned counsel for the petitioner submits that petitioner is not insisting for abortion. Now, he has submitted that delivery of child should take place under the supervision of expert doctors (a) post delivery care of the new born and the mother, (b) some amount should be paid to the petitioner in addition to Victims Compensation Scheme, (c) petitioner does not want to keep the child after delivery, (d) counseling of the victim/petitioner etc.

10. Mr. Naushad Raza, Chairman, Child Welfare



Committee and Ms. Amrita Pritam, Additional Director, Child Protection Unit, Samastipur were personally present at the request of the Court, who during course of hearing informed that between Zero to Six years which may be extended up to 08 years, the new born baby will be kept in Adoption Centre run by the State Government in collaboration with NGO. Thereafter, the child will be kept in Children's Home. After 18 years of age, the child will stay in Care Home where he will be given training for skill development up to the age of 21 years.

11. In support of his argument, learned counsel for the petitioner relied upon the judgment passed in the case of **Z vs. State of Bihar & Ors** as reported in **(2018) 11 SCC 572** and in the case of **YYYY & Anr v. Union of India** as reported in **2022 SCC OnLine Ker 1238**.

12. I have heard learned counsel for the parties and perused the opinion of the Medical Board. From perusal of the opinion of the Medical Board, it is clear that termination of pregnancy is not medically viable keeping in view the period of gestation. Learned counsel for the petitioner has rightly did not press his prayer for medical termination of pregnancy in view of unanimous opinion of the Medical Board.

13. Taking into consideration the situation which



now emerged, the victim/petitioner will deliver the baby after completing the period of pregnancy, in that situation, in my opinion, the State authorities/machinaries are required to render necessary support and help to the petitioner/victim as well as new born baby.

14. Accordingly, I issue the following directions:-

(i) Ms. Amrita Pritam, Additional Director, Child Protection Unit as well as Chairman, Child Welfare Committee, and the Collector, Begusarai are directed to ensure periodical checkup and safe delivery of child in the Government Hospital at Begusarai and if any expert medical assistance is needed, the victim/petitioner shall be taken to specialized hospital available in the city of Begusarai or nearby.

(ii) The doctors and medical experts are requested to provide all necessary assistance and facilities in order to facilitate the safe delivery of the baby in the Government Hospital or specialized centre.

(iii) The aforesaid authorities are directed to reserve a separate room for the victim/petitioner and her family members in the concerned hospital at the relevant time.

(iv) Upon successful delivery of the child the aforesaid authorities and the concerned hospital shall ensure and



see that the new born baby as well as mother are rendered best medical assistance available in the hospital or expert centre in order to see that the new born grows as a healthy child.

(v) If mother of the child and her parents do not want to keep the child after delivery or are not in a position to take responsibility of the child, in that situation, the State Government and its agency will have to take full responsibility of the new born child. The new born child shall be kept in Adoption Centre duly run by the State Government in collaboration with NGO and all efforts should be made to make necessary arrangements for the adoption of the child in accordance with law.

(vi) Since the petitioner/victim is also a minor, the Principal Secretary, Department of Health, Govt. of Bihar shall pay a sum of Rs. 1 Lac in the account of the father of the victim/petitioner in order to meet the post delivery expenses including the food, medical expenses and consumables etc. The amount so released shall be transferred in the bank account of the father of the victim/petitioner exclusively for her benefit.

15. It is made clear that the aforesaid amount awarded by this Court is in addition to the entitlement of the petitioner under the Victims Compensation Scheme framed



under Section 357A CrPC. Father of the victim/petitioner can also approach the State Legal Services Authority and or District Legal Services Authority, if further assistance and or help in this regard is needed. The counseling shall be provided to the victim/petitioner regularly before and after the delivery at least for a period of six months depending upon the mental and psychological condition of the victim/petitioner.

16. The Secretary, District Legal Services Authority, Begusarai will co-ordinate with the authorities of the State Government and shall ensure that the directions issued by this Court is carried out in the best interest of the victim/petitioner and the new born.

17. With the aforesaid directions and observations, this writ application stands disposed of.

(Anil Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	12.05.2022
Uploading Date	17.05.2022
Transmission Date	17.05.2022

