

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 3518 of 2022

**Priya Ghosh
Vs.
The State of West Bengal**

**For the petitioners : Mr. Arindam Sen, Adv.,
Ms. Rinku Sen, Adv.,
Mr. Sagnik Bhattacharya, Adv.,
Md. Sahinurzaman, Adv.**

Judgement on : 19.09.2022.

Bibek Chaudhuri, J.

The *de facto* complainant is the petitioner before this Court. On the basis of a written complaint submitted by the *de facto* complainant, Jetia Police Station Case No. 135/2022 dated 10th August, 2022 under Section 376/406/325/427/506 of the Indian Penal Code was registered. In the written complaint the petitioner made an allegation against one Suraj Mahato to the effect that he under threat and coercion compelled the *de facto* complainant to cohabit with him and as a result of such physical relationship she has conceived. At present, she is pregnant by 11 weeks. In the Trial Court, the petitioner prayed for termination of her pregnancy and DNA test of the baby with the biological father being the accused in respect of above-mentioned Police Station case.

The Trial Judge rejected the said application vide order dated 22nd August, 2022 by a single line order without assigning any reason. The impugned order runs thus:-

“In view of law of land, such prayer of the *de facto* complainant is rejected at this forum”.

Having heard the Learned Advocate for the petitioner and on careful perusal of the materials-on-record it is ascertained that the petitioner is an unwanted mother of a baby in her womb. It is also stated by her that due to forced and unwanted physical relationship she was conceived. Even if the child sees the Sunrays of the earth he will be recognized as a bastard. This Court fails to understand as to how “the law of the land” restricts the petitioner from lawful termination.

Section 3 of the Medical Termination of Pregnancy Act, 1971 reads as follows:-

“3. *When pregnancies may be terminated by registered medical practitioners.*—(1) Notwithstanding anything contained in the Penal Code, 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.

Explanation 1.—Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4)(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

In **Suchita Srivastava & Anr. Vs. Chandigarh Administration** reported in **(2009) 9 SCC 1**, the question that came up before the Hon'ble Supreme Court for consideration is as to whether on the prayer made by a government run welfare institution, pregnancy of an orphan woman allegedly having been raped, may be directed to be terminated. The issues before the Supreme Court were, (i) Whether it was legally permissible to terminate the victim's pregnancy even when she had not given consent for it, and (ii) Whether it was in the victim's best interest to terminate her pregnancy or to continue to it.

In paragraph 37 of the said decision reported, the Hon'ble Supreme Court observed as here under:

"37. As evident from its literal description, the "best interests" test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights."

In **Sangita Sandip Dahilkar Vs. State of Maharashtra** reported in **2020 SCC OnLine Bom 6207**, the mother of a minor rape victim filed petition seeking termination of her daughter's pregnancy. The Division Bench of the Bombay High Court held that the pregnancy in such circumstances would cause mental trauma as envisaged under Section 3 of the Medical Termination of Pregnancy Act, 1971. Considering the circumstance in which the pregnancy had occurred, the court granted the prayer of the mother and the minor girl for termination of pregnancy.

In **Surekha Gautam Khobragade Vs State of NCT (WP (Crl.) 69/2021, decision dated 18th January, 2021)** prayer of mother of minor rape victim for medical termination of the victim was allowed.

The Division Bench of the High Court of Gujrat in **Laxmanbhai @ Lakhubhai Khimabhai Vs State of Gujarat (Special Criminal Application No.4578 of 2020 decided on 14th October, 2020)** granted termination of pregnancy of a rape victim in the interest of the victim alone, considering her young age and the pregnancy pain

caused to her, her mental agony, socio economic position, impact of the child on her future etc.

In view of the ratio laid down in the abovestated reports and considering the fact that if the petitioner is allowed to bear the child for few more weeks it will be harmful for her to terminate the baby. The lady does not want to bear the child. Therefore, this Court is of the considered view that the Learned Additional Chief Judicial Magistrate at Barrackpore failed to consider such aspect of the matter in its true and legal perspective. The petitioner is permitted to get the baby terminated from a recognized Government Hospital.

The Hospital Authority is further requested to keep the blood sample of the fetus for future reference because so far as the paternity is concerned the Court cannot insist upon a person to submit himself for DNA test. The issue as to whether for the purpose of proving the charge DNA test is required or not, will be left open for adjudication by the Learned Trial Judge.

With the above order the instant revision is **disposed of**.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No.06.