

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 543 OF 2022

PETITIONER :- Ms X.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through the Principal Secretary, Public Health Services, Mantralaya, Mumbai-23.
2. District Hospital Wardha, Mahadev-Pura, Wardha.

Ms.S.H.Bhatia, counsel for the petitioner.
Mr.N.S.Rao AGP for the respondents.

**CORAM : SUNIL B.SHUKRE &
ANIL L. PANSARE, JJ.**

DATE : 04.02.2022.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

2. Opinion of the Medical Board tendered across the bar is taken on record. It is a copy of the opinion. For identification purpose, it is marked as Document-A collectively.

3. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

4. The petitioner contends that she is a victim of crime of repeated instances of rape committed during the period from 13.08.2021 to 24.01.2022 in respect of which, upon a complaint made by her, Police Station Ramnagar, Wardha has registered an offence punishable under section 376 (2)(n) of the Indian Penal Code and the investigation is going on. The offence has been registered on 24.01.2022.

5. The petitioner states that as a result of repeated acts of rape, she got conceived and presently her pregnancy has ran into 25-26 weeks. The petitioner contends that continuation of such a pregnancy is a continuous cause of anguish for her and it is affecting her mental health. She further submits that if this pregnancy results in delivery of a child, it would only add to the injury already caused to her mind. These are the submissions made by the petitioner through her learned counsel.

6. Learned AGP submits that if the parameters of Section 3 and the provisions of Section 4 of the Medical Termination of Pregnancy Act, 1971 prescribing the procedure are followed, this petition can be allowed. In support, he places reliance upon the opinion of the Medical Board.

7. Section 3(2)(b) and Section 3(4)(a) of the Medical Termination of Pregnancy Act, 1971 as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021, which has been brought into force with effect from 25.03.2021 and also Section 5(A) thereof as amended by Medical Termination of Pregnancy (Amendment) Act, 2021 are relevant. Section 3(2)(b) along with explanations and Section 3(4)(a) and section 5(A) are reproduced as under :

“Sec.3. When Pregnancies may be terminated by registered medical practitioners – (1)

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered Medical Practitioner, -

(a)

(b) Where the length of the pregnancy exceeds twenty weeks but does not exceed twenty four weeks in case of such category of woman as may be

prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1 - For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2 - For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3)

(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.

Sec.5A. (1) No registered medical practitioner shall reveal the name and other particulars of a woman whose pregnancy has been

terminated under this Act except to a person authorised by any law for the time being in force.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment which may extend to one year, or with fine, or with both.”

8. It is clear from the above referred provisions that if the pregnancy exists for more than 24 weeks and in the opinion of the Registered Medical Practitioners formed in good faith, continuation of such pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health, the pregnancy can be medically terminated. It is also clear that where any pregnancy is alleged by any pregnant woman to have been caused by rape, the anguish caused by such pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman. Now, if we consider the opinion of the Medical Board, we find that the requirements of section 3(2)(b) are fulfilled in this case. The Medical Board has opined that as the girl is unmarried, constitution of pregnancy will harm the girl, physically as well as mentally and if the baby is delivered, it will not get any proper care. In addition to this, it is an admitted fact that the pregnancy has been caused by the rape and therefore, the

presumption of anguish and causing of grave injury to mental health is already there in favour of the petitioner.

8. We are supported in our such view by following cases:-

- (1) *“ABC” Vs. State of Maharashtra and ors. reported in 2019 (5) Mh.L.J.(Cri.) 731,*
- (2) *Sumaiya Imran Shaikh and another Vs. State of Maharashtra and ors. reported in 2019 SCC OnLine Bom 4661,*
- (3) *Sunaina Avadhesh Prasad Vs. State of Maharashtra and ors reported in 2020 SCC OnLine Bom. 7362,*
- (4) *Rescue Foundation through its Superintendent Sharda Khulat and anr Vs. State of Maharashtra and ors. reported in 2021 SCC OnLine Bom 1384,*
- (5) *Pramod A. Solanke Vs. Dean of B.J.Govt. Medical College and Sasoon Hospital, Pune reported in 2020 SCC OnLine Bom.639 and*
- (6) *X Vs. State of Maharashtra reported in 2019 SCC OnLine Bom 9965.*

9. In view of above, the writ petition deserves to be allowed and it is allowed accordingly. Permission is granted to medically terminate the pregnancy by following the procedure prescribed in section 3 and section 4 of the Medical Termination of

Pregnancy Act, 1971. Before the pregnancy is actually terminated, written consent of the pregnant woman shall be taken. Investigating Officer shall remain present on the scheduled date at the place where termination of pregnancy is going to take place and shall be permitted to take appropriate samples for DNA testing and profiling.

10. In order to maintain confidentiality of the issue, we direct that the cause title of the petition in the judgment be stated as Ms X Vs. State of Maharashtra.

11. Remuneration of Rs.3,500/- be paid to the learned counsel appointed through High Court Legal Services Sub-Committee, Nagpur.

12. Steno copy of the judgment be furnished to the parties.

13. Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J)

(SUNIL B. SHUKRE, J)