



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. NO.3607 OF 2022

G.Chithradevi

... Petitioner

Vs

1. The Principal Secretary to the State,
Department of Health and Family Welfare,
Fort St. George,
Chennai - 600 009.
2. The Dean,
Thanthai Periyar Government Hospital,
Erode.
3. The Chairman,
Child Welfare Committee,
Erode - 638 002.
4. The State,
rep. Inspector of Police,
All Women Police Station,
Bhavani, Erode - 638 301.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing 2nd respondent to terminate the pregnancy of the petitioner's daughter Madumitha.

For Petitioner : Ms.S.Sridevi

For Respondents : Mrs.Geetha Thamaraiselvan
Special Government Pleader

O R D E R

Mrs.Geetha Thamaraiselvan, learned Additional Government Pleader accepts notice for the respondents and does not contest the relief sought by the petitioner in this Writ Petition. Hence, at request of the petitioner, this Writ Petition is disposed finally even at the stage of admission.



2. The Writ Petitioner is the mother of two girl children, the older aged 16 years by name Madumitha (referred to hereinafter as 'victim'). She studies in Class 10th in St. Sebastian High School at Nagalur. On 06.02.2022, the victim was taken to Sivasakti Hospital, complaining of a stomach ache.

3. She was found to be six (6) months pregnant and was taken to the Government Hospital for further attention. As on date, she is 26 weeks pregnant and the mother seeks the intervention of this Court for termination of her pregnancy in terms of Section 3 of the Medical Termination of Pregnancy Act, 1971 (in short MTP Act).

4. The petitioner alleges that it is the father of the victim who is responsible for her pregnancy. She further states that a case has been registered in this regard in Crime No.02 of 2022 in terms of Section 5(1)(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, a copy of which is placed on record at pages 30 to 32 of the compilation.

5. Being a minor, the mother of the petitioner has approached this Court expressing willingness, and in fact, the desire of the minor victim to terminate the pregnancy caused by her own father.

6. The provisions of Section 3 of the MTP Act permit a registered medical practitioner to terminate pregnancy that does not exceed 24 weeks where two registered medical practitioners opine in good faith that the continuance of the pregnancy would either (i) involve risk to the life of a pregnant woman, (ii) present grave injury to her physical as well as mental health or (iii) there would be substantial risk to the child if it were born and that (iv) it would suffer from a serious physical or mental abnormality.

7. The registered medical practitioner/R2 has thus not proceeded with the procedure for medical termination in this case as the pregnancy has exceeded 24 weeks at the time of examination of the victim on 07.02.2022. Her report dated 08.02.2022 states that the Court's order permitting medical termination is required for further progress in the matter.

8. This Report is placed on record at pages 26 to 29 of the compilation. Thus, this Court proceeds on the basis that all that stands in the way of the procedure being conducted safely



without any detriment or danger to the life of the victim, is the clearance required from this Court.

9. The victim is 16 years old as evidenced from the birth certificate placed at page 34 of the compilation, her date of birth being 17.10.2006. She has undergone significant trauma by virtue of the present impregnation and her desire to terminate the present unwanted pregnancy has been conveyed by her mother, the petitioner herein.

10. I am thus of the categoric and unambiguous view that she must be permitted to terminate her pregnancy, so that some measure of normalcy will be restored to her young life. This Court also fondly hopes that she may pursue her academics and other extra-curricular activities, and forever put behind her, this unfortunate incident.

11. The mandamus as sought for is issued by way of the following directions:

(i) R2 will proceed to terminate the pregnancy of the petitioner's daughter, Madumitha, forthwith and without any further delay.

(ii) The procedure will be performed by a team that comprises experienced medical practitioners bearing in mind the tender age of the victim and one commensurate with the medical complications on hand.

(iii) It will be ensured that all required precautions, medically and otherwise, will be taken by the team and no efforts will be spared in this regard.

(iv) R1 and 3 shall also assume responsible for overall supervision of the conduct of the procedure and ensure that all necessary assistance is provided to the victim throughout the process.

(v) The foetus or sufficient part thereof will be preserved using appropriate and scientific preservation methods for use by the IO in the inquiry in the criminal case, including DNA testing.

(vi) Separate Reports of compliance of the above directions will be filed by R2 and R3, also including details of the victim's health and condition post the procedure, within one week of conduct of the procedure of medical termination as above.



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12. This Writ Petition is disposed in the above terms. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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Department of Health and Family Welfare,
Fort St. George,
Chennai - 600 009.
2. The Dean,
Thanthai Periyar Government Hospital,
Erode.
3. The Chairman,
Child Welfare Committee,
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4. The State,
rep. Inspector of Police,
All Women Police Station,
Bhavani, Erode - 638 301.

Copy To

The Section Officer,
Writ Section (Posting), High Court,
Madras.

+1cc to Ms.S.Sridevi, Advocate, S.R.No.11779

+1cc to Government Pleader, SR.No.12340(03/03/2022)

W.P. No.3607 of 2022

GSM(CO)
PM/23/02/2022