



WP.No.30109 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.30109 of 2022

Gopiraman

... Petitioner

Vs

1. The Principal Secretary to the State
Department of Health and Family Welfare,
Fort St. George, Chennai.
2. The Dean,
Government Thiruvannamalai Medical
College and Hospital, Thiruvannamalai.
3. The Chairman,
Child Welfare Committee,
Thiruvannamalai District.
4. The State Rep. by Inspector of Police,
Vandavasi South Police Station.

... Respondents



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Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the second respondent to terminate the pregnancy of Ettiyammal.

For Petitioner : Ms.S.Sridevi

For Respondents : Mr.U.M.Ravichandran,
Spl. Government Pleader

ORDER

This Writ Petition has been filed to direct the second respondent to terminate the pregnancy of the petitioner's minor daughter.

2. It is the case of the writ petitioner that the petitioner's minor daughter was subjected to sexual assault which resulted in pregnancy. It is his further case that now his daughter is 27 weeks pregnant and the Medical Board has opined that gestation carries risk for termination of pregnancy as well as continuation of pregnancy of the minor girl. Hence, seeks a direction of this Court for terminating the pregnancy of the his daughter.



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3. Mr.U.M.Ravichandran, learned Special Government Pleader takes notice for the respondents. According to him, as per the Medical Termination of Pregnancy [Amendment] Act, 2021, till 24 weeks pregnancy alone can be terminated. However, in the event of any risk, the Medical Board may take a call on it.

4. The Hon'ble Supreme Court in the case of A vs. Union of India reported in (2018) 4 SCC 75 permitted termination in a case where the gestational age was 25-26 weeks. In Murugan Nayakkar vs. Union of India reported in 2017 SCC Online SC 1092, the Hon'ble Supreme Court once again allowed termination of pregnancy in the case of 13 year old child and in Sarmishtha Chakraborty vs. Union of India reported in (2018) 13 SCC 339 permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendations of the medical board.

5. Similarly, in the case of Meera Santosh Pal vs. Union of India reported in 2017 3 SCC 462 permission for medical termination of pregnancy was granted when the pregnancy crossed 24 weeks, based on the medical reports pointing out the risk involved in the continuation of



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pregnancy. The Kerala High Court in the case of Neethu Narendran vs. State of Kerala reported in 2020 (3) KHC 157 has also permitted termination of pregnancy when the gestation age crossed 23 weeks.

6. The aforesaid decisions were followed by a learned Single Judge of this Court who permitted the medical termination of pregnancy of a rape victim whose gestation age was between 10 to 11 weeks in the case of Mahalakshmi vs. District Collector and others in his decision dated 19.01.2021 in W.P.(MD).No.659 of 2021. The above decisions were followed by this court in a case of S.Manjula Vs. The Principal Secretary to the State Department of Health and Family Welfare and others in W.P.No.25036 of 2021 dated 19.11.2021 and in the case in K.Vijayakumar Vs. State of Tamilnadu Rep. by the Inspector of Police and another in W.P.No.18043 of 2022, dated 15.07.2022.

7. In view of the above decisions, considering the fact that the daughter of the petitioner is a victim of sexual assault and she is only 17 years and continuing the pregnancy will risk life of the victim, though the period is exceeding 24 weeks, as Medical Board has given an opinion that



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for continuing pregnancy and for terminating the pregnancy, risk is involved in both cases and considering the fact that the victim is minor aged about 17 years and the alleged person for the cause is more than 27 years and the daughter of the petitioner is also for such termination, the Medical Board by their Wisdom take necessary action and terminate the foetus, after obtaining necessary consent as per law.

8. With the above directions, this Writ Petition is allowed. No costs.

10.11.2022

vrc

Note : Issue Order Copy today [10.11.2022]

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

To,

1. The Principal Secretary to the State
Department of Health and Family Welfare,
Fort St. George, Chennai.



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2. The Dean,
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N.SATHISH KUMAR, J.

VTC

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