

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

120

CWP-17803-2022

Date of decision: 16.08.2022

ANITA

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Arnav Sood, Advocate
for the petitioner.

Ms. Sunint Kaur, Asstt. A.G. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. The instant petition has been filed under 226 of the Constitution of India seeking issuance of a writ in the nature of Mandamus directing the respondent No.2-Civil Surgeon-cum-Chief Medical Officer, Civil Hospital, Kapurthala to terminate the pregnancy of the child in the womb of the minor daughter (rape victim) of the petitioner.

2. Learned counsel appearing on behalf of the petitioner has pointed out that the minor daughter of the petitioner had become pregnant on account of having being subjected to forcible intercourse against which FIR No. 153 dated 14.07.2022 stands registered against the accused for commission of offence punishable under Sections 363, 366-A of the Indian Penal Code, 1860 and Section 376 of the IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Sultanpur Lodhi, District Kapurthala.

3. The Ultra Sound Scan of the minor victim was conducted which reflected the pregnancy. She was again medically examined on 08.08.2022 at Civil Hospital, Sultanpur Lodhi and was found to be pregnant carrying a foetus of 22 weeks. The instant petition was thereafter filed before this Court.

4. The case had come up for hearing on 10.08.2022 when the following order was passed:

“Petitioner being mother of a rape victim has preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus directing the respondent No.2 to terminate the pregnancy of the child in the womb of minor daughter of the petitioner.

Learned counsel for the petitioner submits that as per medical opinion rendered by the Government Hospital i.e. Punjab Health System Corporation, the pregnancy is found to be of 22 weeks as on 08.08.2022. The victim has become pregnant due to mis-deed of Indal against whom FIR has already been registered.

Learned counsel further submits that it would be humiliating and dangerous for the life of the minor victim to give birth to a child in view of her tender age and there will be substantial risk in case of delivery and the minor may suffer physical and mental abnormalities.

For termination of pregnancy of 12 weeks of gestation period, satisfaction of one medical practitioner is required. In case of more than 12 weeks and upto 20 weeks, satisfaction of two medical practitioner is required and in case of pregnancy of more than 20 weeks, opinion of Medical Board is required.

Mother of the rape victim has come forward for termination of pregnancy of minor rape victim as the continuation of pregnancy may affect physical and mental health of the victim and the termination is within the

acceptable limit with institutional backup.

Notice of motion.

On the asking of the Court, Ms. Aakanksha, A.A.G., Punjab accepts notice on behalf of the respondents.

In view of facts and circumstances of the case, it would be appropriate to direct the respondent No.2 to constitute a medical Board on 11.08.2022. Petitioner undertakes to produce the minor victim before the respondent No.2 at 10.00 A.M. tomorrow and then the victim shall be examined by the Medical Board. Respondent No.2 shall ensure that the Medical Board after medical examination of the victim gives its assessment report regarding termination of her pregnancy to this Court forthwith.

Adjourned to 16.08.2022.

5. Pursuant to the aforesaid order, a Medical Board was constituted on 11.08.2022 and after examination of the minor-victim, the Medical Board, comprising of the 03 Senior Medical Officer from the Civil Hospital, Kapurthala have recommended that the minor victim can undergo termination of pregnancy as per the MTP Act and the rules contained thereunder. The relevant part of the report received from the Medical Board constituted by the Civil Surgeon, Kapurthala is extracted as under :

“To

*Senior Medical Officer Ic:
Civil Hospital, Kapurthala.*

*Sub: Regarding Medical Board report of Patient Mala
D/o Satish Ravidass.*

Sir,

*Patient Mala D/o Satish Ravidass MLR No.
PK/08/2022/SDH/SPL dated 16.07.2022 LMP is
28.03.2022. P/A 20-22 Weeks. USG advised on 11/08/2022*

shows single live foetus of 22.2 weeks +/- 14 days. Placenta anterior and upper according to MTP Rule (PCPNDT) rule she can undergo termination of pregnancy.

<i>Dr. Parminder Kaur</i>	<i>Dr. Anju Bala</i>	<i>Dr. Akashdeep Singh Sohi</i>
<i>Gynaecologist</i>	<i>Radiologist</i>	<i>Surgeon</i>
<i>Civil Hospital</i>	<i>Civil Hospital</i>	<i>Civil Hospital</i>
<i>Kapurthala</i>	<i>Kapurthala</i>	<i>Kapurthala</i>

6. The said report has been seen today and has been returned to the State counsel in original for taking further necessary action.

7. Section 3 of the Medical Termination of Pregnancy Act (hereinafter referred to as the “MTP Act”) deals with permission of registered medical practitioner. Furthermore, the Hon'ble Supreme Court of India has already held in the matter of “***Suchita Srivastava & Another versus Chandigarh Administration***” reported as 2009 (4) RCR (Civil) 258 that a pregnancy can be terminated where such pregnancy has been conceived as a result of rape and the same has been causing a grave injury to the mental health of the minor.

8. It would also be pertinent to mention that the Hon'ble Supreme Court has held in the judgment of “***Sarmistha Chakraborty & Another versus Union of India Secretary & Others***” decided on 03.07.2017 that “the right of a woman to have a reproductive choice is an insegregable part of her personal liberty, as envisaged under Article 21 of the Constitution of India-she has a sacrosanct right to have her bodily integrity”.

9. Furthermore, in the matter of “***Meera Santosh Pal and others versus Union of India and others***” reported as [2017/(1) R.C.R. (Criminal) 634 has held as under:

“Upon evaluation of Petitioner No.1, the aforesaid Medical Board has concluded that her current pregnancy is of about 24 weeks. The condition of the foetus is not compatible with extra-uterine life. In other words, the foetus would not be able to survive outside the uterus. Importantly, it is reported that the continuation of pregnancy can gravely endanger the physical and mental health of petitioner No.1 and the risk of her termination of pregnancy is within acceptable limits with institutional back up.”

10. A further reliance was made on a judgment dated 07.12.2021 passed in Civil Writ Petition No. 24685 of 2021 titled as **“Sanjiv Kumar versus State of Punjab and others”** wherein this Court direct the PGIMER, Chandigarh to carry out medical termination of the pregnancy of a rape victim.

11. Taking into consideration, the background under which the victim has conceived the pregnancy and duly noticed in the order dated 10.08.2022 coupled with the report received from the Medical Board recommending the medical termination of the pregnancy suffered by the minor victim and that the fact it is not likely to endanger the life of the victim herself and taking into consideration that the victim herself has to undergo a psychological distress on account of the current situation apart from the psychological trauma of carrying a pregnancy as a result of the assault on her bodily integrity, the present petition is allowed.

12. It is taken into consideration that the victim is ready and willing to appear before the respondent No.2-Civil Surgeon, Civil Hospital, Kapurthala on or before 20.08.2022 and is also ready and

for undergoing the procedure under the MTP Act.

13. In view of the above, the petitioner is permitted to produce her daughter (minor rape victim) before the respondent No.2-Civil Surgeon-Civil Hospital, Kapurthala on or before 20.08.2022 and upon completion of all the necessary formalities, the said respondent shall undertake the necessary medical procedures.

14. The petitioner would be at liberty to espouse her financial status before the authorities concerned and be entitled to the benefit under the prevalent schemes in accordance with the rules.

The Civil Writ Petition is accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 16, 2022

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No