

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

125

CWP-21190-2022

Date of decision: 16.09.2022

Victim 'X' minor through her mother Sushila @ Sheela Devi

.....Petitioner

VERSUS

State of Haryana and Others

.....Respondents

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

Present:- Ms. Rosi, Advocate
for the petitioner.
Mr. Vivek Chauhan, AAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

The instant writ petition has been filed invoking writ jurisdiction of this Court for issuance of a writ in the nature of Mandamus directing the respondents to terminate the pregnancy of victim "X" daughter of the petitioner in view of the provision of the Medical Termination of Pregnancy Act, 1971.

2. Learned counsel appearing on behalf of the petitioner contends that her minor daughter is a rape victim and she has become pregnant as a result of such offence against her body. An FIR No. 108 dated 02.09.2022 has already been registered in this regard at Women Police Station, Palwal, District Palwal and that she is now carrying a 5-6 months foetus.

3. Upon being aware of the aforesaid pregnancy, an application was submitted by the petitioner for termination of such

unwanted pregnancy. Accordingly, a Board of 04 doctors was

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constituted by the Chief Medical Officer, Palwal on 05.09.2022. As per the opinion of the Medical Board, as the pregnancy was beyond 24 weeks, it was advisable to perform MTP at a higher centre equipped & having a functional ICU/Medical College. It has also been opined by the Medical Board that MTP on the minor patient can be carried out after seeking permission from the Court.

4. The report of the Medical Board has been appended with the instant petition as Annexure P-2. All necessary tests that are pre-requisite for carrying out the medical termination of pregnancy had also been carried out on the petitioner-minor.

5. She refers to provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 wherein pregnancies are permitted to be terminated by a Registered Medical Practitioner. Section 3 of the Medical Termination of Pregnancy Act, 1971 is extracted hereinafter below:-

“3. When Pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 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 twenty weeks, if such medical practitioner is, or

(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.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the

purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be”

6. She contends that the mother of the petitioner being a natural guardian is capable of taking the best decisions on behalf of the minor and that continuation of the pregnancy is likely to cause greater pain to the petitioner who is minor and would be a persistent reminder of the atrocity to which she had been subjected to. Furthermore, taking into consideration her tender age, it would also cause a greater mental harm to the well being of the child. The anguish caused by the pregnancy is itself sufficient to constitute grave injury to the mental health of the petitioner and that it would rather be in the betterment and best interest of the unborn child as well as the petitioner that the pregnancy is permitted to be terminated. She contends that the minor has held detailed deliberation with her mother and they have voluntarily come to the conclusion that it would be in the larger interest of the petitioner that the pregnancy is terminated in accordance with law.

7. Notice of motion.

8. Mr. Vivek Chauhan, AAG, Haryana appears and accepts notice on behalf of respondent-State. He does not controvert the report of the Medical Board that has been appended alongwith the instant petition consisting of 04 doctors and the recommendation made by

them.

9. I have heard learned counsel appearing on behalf of the respective parties.

10. The Hon'ble Supreme Court had held in the matter of "**X versus Union of India**" reported as **(2020) 19 SCC 806**, while considering the case regarding medical termination of pregnancy of a 13 year old rape victim, as follows :-

"3. Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, it would be appropriate that termination of the pregnancy should be allowed".

11. Furthermore, while dealing with the matter of termination of pregnancy in the 24th week in the case of '**Tapsaya Umesh Pisal versus Union of India**' reported as **2018 (12) SCC 57**, it was held by the Hon'ble Supreme Court that :

"it is difficult for us to refuse the permission to the petitioner to undergo medical termination of pregnancy. It is certain that the foetus, if allowed to born, would have a limited life span with serious handicaps which cannot be avoided. It appears that the baby will certainly not grow into an adult."

12. There is no reason for this Court to presume that the opinion given by the Medical Board is not in good faith or as to how the continuation of this pregnancy would be in larger interest.

13. Consequently, the present petition is allowed. At this stage, the petitioner contends that Shaheed Hasan Khan Medical College, District Nuh is a medical college which is nearer to the petitioner with a

higher center equipped with a functional ICU and the said Medical College may be directed to conduct the medical termination of the pregnancy in accordance with law.

14. Resultantly, the Director of Shaheed Hasan Khan Medical College, District Nuh is directed to take appropriate necessary steps to carry out the medical termination of the pregnancy of the petitioner upon satisfaction of all such necessary conditions as are prescribed in law.

15. The petitioner shall approach the Medical College and/or the authorities of the said College within a period of one week whereupon expeditious steps shall be taken for termination of the pregnancy in accordance with law.

16. 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.

17. A copy of this order be handed over to the learned counsel appearing on behalf of the respective parties under the signatures of Court Secretary.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 16, 2022

Vishal sharma

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