

IOIN-CWP-6733-2016 in CWP-6733-2016**R AND ANR. V/S STATE OF HARYANA & ORS***********

Present :- Ms. Tanu Bedi, Advocate
for the petitioner.

Mr. Deepak Malhotra, Standing counsel with
Ms. Simsi Dhir Malhotra, Standing counsel
for Addl. Public Prosecutor, Chandigarh.

Ms. Niharika Sharma, AAG, Punjab.

Mr. Vivek Chauhan, AAG, Haryana.

The IOIN-CWP-6733-2016 has been moved subsequent to the filing of the status report by the State of Haryana as well as to the U.T. Chandigarh giving details regarding the steps initiated by them pursuant to the directions issued by this Court vide order dated 30.05.2016. The relevant part of the directions reads thus:

“(i) Principal Secretary, Department of Health & Family Welfare, Government of Haryana, shall deposit a sum of Rs. 5000/- per month in the account of petitioner No. 1 for food and medical expenses. The deposit shall be made on or before 7th of each calendar month w.e.f. 01.06.2016 for one year.

(ii) The Chief Medical Officer, Nuh and the Medical Superintendent of Civil Hospital-cum-SHKM Government Medical College Malhar shall depute a senior obstetrician/gynecologist to examine petitioner No. 1 from time to time and give proper advice in the matter of medicine and due medical facilities of health professionals i.e nurses etc.. This will be in addition to the help and assistance to be provided to Petitioner No. 1 by AIIMS, New Delhi.

(iii) The Medical Superintendent of AIIMS shall also provide the adequate medical help as aforesaid to victim-petitioner No. 1.

(iv) *Whenever Petitioner No. 1 visits for medical checkup and counselling , the concerned doctors shall deal with her sympathetically. The counselling shall be provided to her regularly as per the mental health of petitioner No. 1 and the requirement for the same in view of the alleged threat of suicide by her.*

(v) *The State of Haryana shall also deposit an amount of Rs.5 lakh in fixed deposit in the name of petitioner No. 1 as damages and expenses as the officers at the helm of affairs failed to act with due diligence. This amount will be in addition to the other claim of petitioner No. 1 under the provisions of law. The said amount shall remain in fixed deposit in a scheduled Bank; however, the interest accruing on it can be paid to petitioner No.1 only after 31.06.2017, by the concerned bank, if demanded by petitioner No. 1.*

(vi) *It is clarified that the amounts awarded by this Court are in addition to the entitlement as per provisions of Code of Criminal Procedure.*

(vii) *This Court has already issued directions in various cases as **Kavita, Vijender and Bashir Khan (supra)**, referred in the earlier part of the judgement. It is emphasized that each of those directions should also be followed in letter and spirit.*

(viii) *The Central Government is advised to consider making amendments to the Medical Termination Of Pregnancy Act, 1971 and clarify in so many words to the doctors that they will not be unnecessarily prosecuted if they act in accordance with the rules in good faith to save the life of a victim of rape or to prevent grave injury to her physical and mental health. Termination of pregnancy in good faith which results from crime is otherwise permitted under the provision of MTP Act.*

(ix) *Seminars for investigating agencies, doctors, lawyers and judicial officers who have occasion to deal with such cases should be organized periodically. They should be sensitized*

about the urgency and immediate need of counselling and other medical assistance required to a rape victim. The respective departments having control over these agencies should regularly update its officers/officials about the legal provisions and settled law on the subject.

(x) The Refresher Courses for the members of the Superior and Subordinate Judiciary of the States of Punjab, Haryana and U.T. Chandigarh be held to make them aware of the provisions of the MTP Act and urgency in such cases. In order to ensure that if any case is brought before the gestation period reaches 20 weeks, victim be informed about her choice to seek termination at the earliest.

(xi) The copy of this judgment be sent to the offices of Advocate Generals of Punjab and Haryana and the Standing Counsel for U.T., in order to ensure that if, and when, any case is brought to Court for passing of any orders under the MTP Act, the said case can be determined on the first day itself by sending the woman to the medical board immediately for quick action if possible under the provisions of law. The need for filing of reply should not arise so as to avoid wasting of precious time available with the pregnant victim.

(xii) The Registry is directed not to mention the name of rape victim in the cause list, judgment order, but they may refer to her name by mentioning the first alphabet of her name.

(xiii) The Counsel representing the victim of rape are also requested not to disclose the identity of victim in the petition in the head-note of petition. They may also write the first alphabet of name of the victim and may quote 'name withheld' in particulars.

Insofar as the reference to the judgments in the matter of

“Kavita versus State of Haryana and others” reported as 2015 (2) RCR

(Criminal) 606 is concerned, the victim in the said case was only 12 years old and was impregnated, as a result of delay, the decision making period exceeded 34 weeks. Various directions had been thus issued by the Division Bench of this Court while dealing with the said issue. In the case of “**Bashir Khan versus State of Punjab and another**” reported as **2014 (4) RCR (Criminal) 148**, the following directions were issued:

“8. Considering the fact every passing day could harm her physically and mentally, I am of the view that she must be examined by the two medical practitioners attached to the Obstetric and Gynaecology department at PGI and the Director, PGI, Chandigarh, will immediately constitute an ad hoc Medical Board to examine the petitioner on 04.08.2014 and if they are of the view that the length of pregnancy does not exceed 20 weeks, proceed to terminate the pregnancy by appropriate medical procedure. No further direction is necessary from the court before the actual procedure is done, needless to say, care being taken to ensure physical and mental safety of the victim.

9. To ensure that the victim of rape who becomes pregnant does not lose time by applying from court to court, there shall be general instructions given by the Director General of Police to all the police stations who register cases of rape and who come by information that the victim has become pregnant to render all assistance to secure appropriate medical opinions and also provide assistance for admission in Government hospitals and render medical assistance as a measure of support to the traumatized victim. The need to apply to the court for permission would arise only in a situation where there is a conflict of whether the pregnancy must be terminated or not or when the opinions of two medical practitioners themselves differ. It is hardly necessary in a situation where there is no contest and the victim gives her own

consent and the guardian also gives consent and there is proof of such pregnancy was resultant to an offence of rape. This instruction shall also be circulated to all the Station Inspectors manning police stations in the State of Punjab.

10. Issue copy of the order dasti. Registry may dispatch the order copy to the Director, PGI, Chandigarh, to carry out the directions for immediate constitution of the Medical Board for examination of the patient and to carry out the opinion if it were to be that the patient requires the medical procedure for termination of pregnancy. Since the birth certificate of the victim is not available, I have taken the age to be 14 years on the assertion of the parent. The medical practitioner may carry out such test as it finds necessary to ascertain her age. This is only by way of caution, for, even without reference to the age and if she was more than 14 years of age if she was a victim of rape, there is not an age restriction for carrying out the termination of pregnancy. There is also a direction to take appropriate samples of the foetus for DNA testing that could be used, if necessary at an appropriate time.”

Furthermore, in the case of “**Vijender versus State of Haryana and others**” reported as **2015 (1) R.C.R (Civil) 163**, this Court held as under:

“5. There has been a similar petition before this Court on a previous occasion which was disposed of in CWP No. 14058 of 2014 decided on 02.08.2014. I had directed that in every case where a complaint of rape is lodged and the victim is found to have become pregnant and she does not want to retain the foetus, the pregnancy itself may be treated as involving grave mental injury and the medical assistance must be secured to the rape victim at the nearest Government hospital with a request through the rape victim or the guardian

depending on whether the person is a minor or not to take an opinion from the competent medical personnel about the feasibility of termination of pregnancy and carry out the procedure without wasting any time. A rape victim shall not be further traumatized by putting through a needless process of approaching Courts for taking permission. The Medical Termination of Pregnancy Act does not contemplate such a procedure at all and the medical personnel before whom the person shows up is bound to respond to an information regarding complaint of rape and if evidence is available that the person is a victim of rape, the medical personnel will take decision regarding the termination of pregnancy and carry out the procedure. If a plea for termination of pregnancy is made that should be dealt with such sensitivity as the occasion demands.

6. In the writ petition referred to above in CWP No. 14058 of 2014, this Court has directed the order copy to be dispatched to the Director General of Police for the States of Punjab, Haryana and Union Territory, Chandigarh. If this direction had been taken seriously and the information must have percolated to the SHO, he would not have forced the petitioner to approach this Court for appropriate direction. This order is directed to be sent to the Director General of Police, Haryana who will in turn communicate the matter to the SHO concerned and elicit the information as to why he did not assist the rape victim to secure the medical assistance in the manner that she deserved in spite of directions already given by this Court.

7. The writ petition is disposed of with the above directions. If the petitioner brings the rape victim with identification and produces the copy of this order, the District Medical Officer or the officer who holds the power of superintendence over the facilities in the Government Hospital,

Hisar shall carry out the directions forthwith. A copy of this order be issued under the signature of Special Secretary of this Court.”

Learned *Amicus Curiae* has submitted that the respondent authorities have been regularly taking up measures for creating awareness amongst the members of various communities and the legal awareness campaigns, through various programmes are being run by the respective District Aid Legal Services Authorities to create awareness amongst the general public, the Doctors and also the Police officials. She fairly submits that in case the respondent authorities continue to take appropriate measures as directed by this Court in order dated 30.05.2016 and extracted above and especially as contained in direction Nos. “VII to XIII” there would be no further necessity to pass subsequent orders in this case.

Counsel appearing on behalf of the respondents submits that the State agencies shall continue to carry forward the directions so issued and continue to create awareness so that all the stake holders are aware of their rights and responsibilities under the statute.

The present **IOIN-CWP-6733-2016** is disposed of.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 21, 2022

Vishal sharma