

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5597 OF 2023

**XYZ
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE PRINCIPAL
SECRETARY AND ANOTHER**

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Smt. Ranjana D. Reddy, Advocate for petitioner
Mr. S. B. Yawalkar, AGP for respondents

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**CORAM : Y. G. KHOBRAGADE, J.
(Vacation Court)**

DATE : 23.05.2023.

PER COURT :-

Heard Smt. Ranjana D. Reddy, learned counsel for the petitioner and the learned AGP for the respondents – State at length.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner contends that she is victim of crime of rape committed in the month of October/November – 2022 by

unknown person when she was proceeding towards her field at about 10.00 a.m. to 12.00 p.m. She lodged First Information Report with Bhokar Police Station, on which basis Crime No.152 of 2023 registered against the accused. The petitioner further contended that due to incidence of rape she suffered pregnancy and she is carrying pregnancy of almost about 25 weeks. Therefore, the petitioner urged to permit medical termination of pregnancy.

4. On 19.05.2023, this Court passed an order and called Medical Expert report. In response to said order, the Medical Board of respondent No.2 Dr. Shankarrao Chavan Government Medical College and Hospital, Vishnupuri, Nanded, submitted report, wherein the Medical Expert found 24.5 weeks pregnancy. As per the Medical Board report, the petitioner is physically and mentally fit to undergo medical termination of pregnancy.

5. It is not in dispute that on the basis of F.I.R. lodged by the petitioner, Crime No.0152 of 2023 is registered against the accused for the offence punishable under Sections 341, 363, 366A, 376(1), 323 of Indian Penal Code and Section 4 of the POCSO Act.

6. The petitioner appears to be 18 years of old from tribble community and due to result of act of rape, she got conceived and presently her pregnancy has run by 24.5 weeks. The petitioner contends that the continuation of such pregnancy is a continuous cause of anguish for her and it is affecting her mental health. The petitioner further submits that if this pregnancy results in delivery of child, it would only add to the injury already caused to her mind.

7. The learned AGP submits that as per the provisions of Sections 3 and 4 of the Medical Termination of Pregnancy Act, 1971 prescribed in the procedure are followed, this petition can be allowed. It is submitted that Section 3(2)(b) and Section 3(4)(a) of the Medical Termination of Pregnancy Act, 1971 as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021, which has been brought into force with effect from 25.03.2021 and also Section 5(A) thereof as amended by Medical Termination of Pregnancy (Amendment) Act, 2021 are relevant. Section 3(2)(b) along with explanations and Section 3(4)(a) and Section 5(A) are reproduced as under:

“Sec.3. When Pregnancies may be terminated by registered medical practitioners – (1)

(2) Subject to the provisions of sub-sec.(4), a pregnancy may be terminated by a registered Medical Practitioner, -

(a)

(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 purpose 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 purpose of clause (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.

(3)

(4)(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a [mentally ill person], shall be terminated except with the consent in writing of her guardian.

Sec.5A.(1) No registered medical practitioner shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act except to a person authorised by any law for the time being in force.

(2) Whoever contravenes the provisions of sub-sec. (1) shall be punishable with imprisonment which may extend to one year, or with fine, or with both.”

8. It is clear from the above referred provisions that if the pregnancy exists for more than 24 weeks and in the opinion of the Registered Medical Practitioners formed in good faith, continuation of such pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health, the pregnancy can be medically terminated. It is also clear that where any pregnancy is alleged by any pregnant woman to have been caused by rape, the anguish caused by such pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman. Now, if we consider the opinion of the Medical Board, we find that the requirements of sec. 3(2)(b) are fulfilled in this case. The Medical

Board has opined that as the girl is unmarried, constitution of pregnancy will harm the girl, physically as well as mentally and if the baby is delivered, it will not get any proper care. In addition to this, it is an admitted fact that the pregnancy has been caused by the rape and therefore, the presumption of anguish and causing of grave injury to mental health is already there in favour of the petitioner.

9. In the following cases, the coordinate Bench of this Court as well as the Hon'ble Apex Court permitted the petitioner to terminate the pregnancy conceived out of incident of the rape.

(1) "ABC" Vs. State of Maharashtra and ors. Reported in 2019(5) Mh.L.J. (Cri.) 731;

(2) Sumaiya Imran Shaikh and another Vs. State of Maharashtra and ors. Reported in 2019 SCC OnLine Bom 4661;

(3) Sunaina Avadhesh Prasad Vs. State of Maharashtra and ors reported in 2020 SCC OnLine Bom. 7362;

(4) Rescue Foundation through its Superintendent Sharda Khaulat and anr Vs. State of Maharashtra and ors. Reported in 2021 SCC OnLine Bom 1384;

(5) Pramod A. Solanke Vs. Dean of B.J. Govt. Medical College and Sasoon Hospital, Pune reported in 2020 SCC OnLine Bom. 639 and

(6) X Vs. State of Maharashtra reported in 2019 SCC OnLine Bom 9965."

10. In view of above, the writ petition deserves to be allowed and it is allowed accordingly. Permission is granted to medically terminate the pregnancy by following the procedure prescribed in Sec. 3 and Sec. 4 of the Medical Termination of Pregnancy Act, 1971. Before the pregnancy is actually terminated, written consent of the pregnant woman shall be taken. Investigating Officer shall remain present on the scheduled date at the place where termination of pregnancy is going to take place and shall be permitted to take appropriate samples for DNA testing and profiling.

11. The petitioner shall appear before the concerned Medical Board on 25.05.2023 for termination of the pregnancy operation.

12. Parties to act upon an authenticated copy of this order.

13. Rule is made absolute in the above terms. No costs.

[Y. G. KHOBRADE, J.]

SMS