



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Wednesday, the Twelfth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR
AND

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

HCP(MD). No.434 of 2023

Erulayie .. Petitioner/ Grandmother of the Detenue

Vs

1. The Superintendent of Police,
Ramanathapuram District.
2. The Inspector of Police,
Parthibanur Police Station,
Ramanathapuram District.
3. Rooban ... Respondents

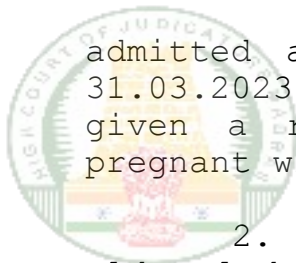
Prayer :-

Petition filed Under Article 226 of Constitution of India, to issue a writ of Habeas Corpus, directing the respondents no.1 and 2 herein to secure and produce the body or person of the detenue namely Rajapriya, D/o.Ramesh, aged about 15 years who was illegally detained by the 3rd respondent, before this Court and hand over her custody to the petitioner.

ORDER:- This Habeas Corpus Petition is coming on for orders on this day and earlier order of this Court dated 10.04.2023 and upon hearing the arguments of Mr. C.Senthil Murugan, Advocate for the Petitioner and of Mr. RMS.Sethuraman, Additional Public Prosecutor, for the respondents No.1 and 2, this Court made the following order:

(Order of the Court was made by **R.SURESH KUMAR, J.**)

Though this Habeas Corpus Petition has been disposed of by our order dated 10.04.2023, it has been mentioned by the learned Additional Public Prosecutor appearing for the respondents that, as per the order of this Court dated 10.04.2023, when the respondent police made attempts to take the detenue to handover her to the petitioner, who is the grand-mother of the detenue, her grand-mother seems to have refused to take back the detenue, on the ground that, as the petitioner being an age old lady, she is residing alone and insofar as the detenue girl is concerned, though she is a minor, due to the intimacy she developed with the third respondent, this has already been recorded in our earlier order dated 30.03.2023, when medical examination was taken place for which when the detenue was



admitted at the Government Medical College Hospital, Ra on 31.03.2023, the doctors team having examined the detainee as given a report stating that, the detainee girl is eight weeks pregnant with single foetus.

2. Probably based on this reason the petitioner being an elder lady as there was no one to help her was hesitant to take back the detainee, therefore, in that context only, the learned Additional Public Prosecutor mentioned before this Court to re-list the matter for taking further appropriate decision.

3. That is the reason why, this Habeas Corpus Petition has been listed today and it has been taken up for hearing.

4. Today, the detainee has been brought and produced before this Court. The petitioner also appeared before this Court. That apart, the mother of the detainee i.e., the daughter of the petitioner viz., Mrs.Rajathi also appeared and stated that she has come from Singapore only yesterday to attend this case.

5. The Petitioner has stated before us that since the detainee is eight weeks pregnant, medical termination has to be undertaken against the foetus being carried by the detainee, otherwise, that will cause some health issues to the detainee, who is a minor girl admittedly, and that apart, there will be a great social stigma attached, that will have a greater repercussion in the whole life of the detainee. Therefore, in the interest of the future of the detainee, the petitioner wanted the termination of the pregnancy of the detainee.

6. The very same view has been expressed by Mrs.Rajathi, the mother of the detainee, who in fact has given a written consent before this Court for the medical termination of the pregnancy of her daughter i.e., the detainee.

7. With the aforestated factual background of this case, when we analyse the legal position, Section 3 of the Medical Termination of Pregnancy Act, 1971 (in short the Act) speaks about medical termination of pregnancy in certain circumstances. In order to understand that legal position, we have to analyse Section 3 of the Act, which is extracted hereunder:-

"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 twelve weeks, if such medical practitioner is, or



(b) where the length of the pregnancy exceeds two weeks but does not exceed twenty four weeks in case of category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of 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 such 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, any anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2. - For the purposes 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.

(2-A) 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.

(2-B) 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.

(2-C) 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.

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

(a) a Gynaecologist;

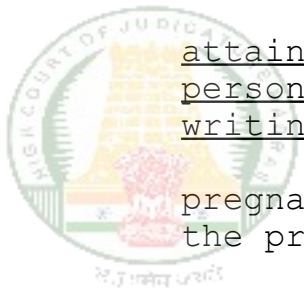
(b) A Pediatrician;

(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.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

(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 person, shall be terminated except with the consent writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

(Emphasis supplied)"

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8. It is to be noted that, under Section 3(b) of the Act, the medical termination of pregnancy can be made, where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, in case of such category of women as may be prescribed by the rules made under this Act, if not less than two registered medical practitioners are, of opinion, formed in good faith, that 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 there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities, that kind of termination would be possible, which has also been allowed under Section 3(b) of the Act.

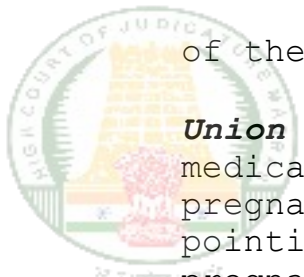
9. However, insofar as the present case is concerned, the gestation period of the pregnancy is only eight weeks as on 31.03.2023. Therefore, gestation period as of now is running to be the 10th week. Therefore, it is certainly under the 20 weeks pregnancy that has been fixed under Section 3(b) referred to above.

10. Insofar as the present pregnancy of the detainee is concerned, since she is a minor, sub-section 4 of Section 3 of the Act makes some prohibition stating that unless the consent in writing of the guardian is given, no pregnancy of a woman, who has not attained the age of 18 years shall be terminated. The relevant portion i.e., Section 3(4) has already been extracted herein above.

11. In this context, when almost a similar issue that has confronted, a learned Judge of this Court in a Writ Petition in W.P. No.18043 of 2022 in the matter of **K.Vijayakumar v. The State of Tamil Nadu, represented by the Inspector of Police, AWPS. Polur, Tiruvannamali and another** has dealt with the matter, where the pregnancy was seems to be advanced stage i.e., 28 weeks + 3 days. Therefore, the prohibition since has come under Section 3(b) of the Act as referred to above, the learned Judge having analysed the factor thoroughly has passed the following order:-

"6. Here is a case where the length of pregnancy of the victim girl has exceeded 28 weeks + 3 days.

7. 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.

8. Similarly, in the case of **Meera Santosh Pal 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 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.

9. 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.

10. The two Doctors, who were present before this Court today, have also submitted that considering the physical and mental state of mind of the victim, it is advisable for early termination of her pregnancy.

11. From the aforementioned decisions, it is clear that even in cases where the length of pregnancy has exceeded 20 weeks, this Court is having power to order for termination of pregnancy of the victim girl on the ground of grave danger to her physical and mental health.

12. Section 3 of the Medical Termination of Pregnancy Act, 1971 deals with cases for medical termination of pregnancy without intervention of the Court. Without intervention of the Court, a Registered Medical Practitioner can terminate the pregnancy in the circumstances mentioned in section 3(2) of the Medical Termination of Pregnancy Act, 1971. While exercising powers under Article 226 of the Constitution of India, this Court has got wider powers than what is prescribed under section 3(2) of the Medical Termination of Pregnancy Act, 1971 which permits the registered medical practitioner to terminate the pregnancy only when the length of pregnancy does not exceed a maximum period of twenty weeks. In the case on hand, the victim girl is 28 weeks + 3 days pregnant. However, considering the fact that the medical report recommends termination of her pregnancy and after giving due consideration to the fact that the victim girl is small statured and is only 13 years old, this Court exercising powers under Article 226 of the Constitution of India has got the powers to take judicial notice of those facts and can permit termination of victim's pregnancy. As observed earlier, the victim is also not physically and mentally strong to withstand the pregnancy and this Court has taken into consideration the said factor also.

13. Apart from the above reasons, this Court is also taking judicial notice of the fact that the petitioner is an agricultural labourer and surviving on hand to mouth existence. He admittedly belongs to the below poverty line



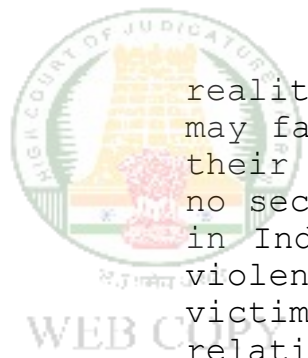
category. If the minor victim girl is allowed to deliver child, not only the victim, but also her parents suffer. The petitioner has also stated that he came to know about her minor daughter's pregnancy only after coming to know that she did not get her menses for a long time.

14. For the foregoing reasons, this court is of the considered view that the petitioner is entitled to obtain a direction from this Court to the first respondent to terminate the pregnancy of her minor daughter X, aged 13 years approximately forthwith."

12. In a latest decision of the Hon'ble Supreme Court in the matter of ***X v. The Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and others*** in Civil Appeal No.5802 of 2022 dated 29.09.2022, while considering Rule 3(b), it has been held as follows:-

"68. By framing Rule 3B, the legislature intended to solve the mischief, so to speak, of women being unable to access abortions when their lives underwent significant changes impacting their physical and mental health, and their decision to have a child was impacted after the length of the pregnancy exceeded twenty weeks. The Minutes of the Meeting of the Expert Committee held on 22 June 2021 for deliberating upon and drafting the MTP Rules dealt with, inter alia, category of women under Rule 3B. The members of the Expert Committee suggested different categories of women such as "survivors of sexual violence/rape; mentally challenged women, minors, women with disabilities; foetal anomalies; conception in lactational amenorrhea period; single women (such as unwed women (major), divorced and widowed, separated women); women who are facing difficulties in contexts of humanitarian setting/ emergencies and/or natural disasters; women victims of domestic violence/ gender-based violence etc." The members of the Expert Committee urged the inclusion of women in Rule 3B, who often delay revealing the pregnancy or making decisions as to its continuance, for various reasons.

69. The common thread running through each category of women mentioned in Rule 3B is that the woman is in a unique and often difficult circumstance, with respect to her physical, mental, social, or financial state. All the different categories in Rule 3B represent women who seek an abortion after twenty weeks either due to a delay in recognizing pregnancy, or some other change in their environment impacting their decision on whether the pregnancy is wanted or unwanted. The law recognizes the myriad ways in which a pregnancy may cause distress in such situations and cause grave injury to her physical and mental health. It gives such women latitude in seeking out the termination of an unwelcome pregnancy by extending the gestational period up to which the termination is legally permissible.

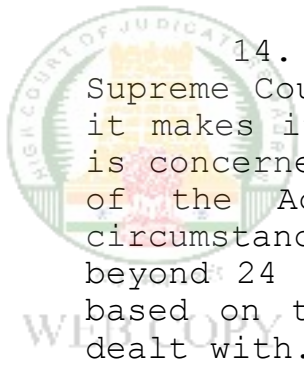


70. Rule 3B(a) is based on an acknowledgement of reality that survivors of sexual assault, rape, or incest may face immense stigma if and when they share the facts of their assault with others, including family members. It is no secret that a culture of shame surrounds sexual violence in India. Survivors are often hesitant to speak about the violence inflicted upon them. This is doubly the case with victims of incestuous sexual assault or rape, whose close relatives abuse their power and authority over the woman and other family members oftentimes being unwilling to believe that the perpetrator (that is to say, their relative) is guilty of sexual violence. Many survivors, including minors, may not even be aware that pregnancy is a possible consequence of rape. Hence, the delay in revealing the fact that a man has raped them may lead to a delay in discovering the pregnancy. Alternatively, the woman in question may be unable to access medical facilities in a timely fashion and may therefore find herself unable to terminate the pregnancy before the completion of twenty weeks."

13. In para 79 and 80 of the judgment their Lordships have also held as follows:-

"79. Furthermore, Section 19(1) of the POCSO Act requires that any person, including a child, who has knowledge of the commission of an offence punishable under the POCSO Act, or an apprehension that such an offence may be committed, is mandatorily required to provide information to the Special Juvenile Police Unit or the local police. Section 19(2) of the POCSO Act stipulates that every 86 "POCSO Act" such report under Section 19(1) shall be ascribed an entry number and recorded in writing, read over to the informant, and entered in a book to be kept by the police unit. Failure to report, as mandated by Section 19, is a punishable offence under Section 21 of the POCSO Act. Neither the POCSO Act nor the Protection of Children from Sexual Offences Rules 2012 prescribe a template or a format for the report mandated under Section 19(1).

80. When a minor approaches an RMP for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged under Section 19(1) of the POCSO Act to provide information pertaining to the offence committed, to the concerned authorities. An adolescent and her guardian may be wary of the mandatory reporting requirement as they may not want to entangle themselves with the legal process. Minors and their guardians are likely faced with two options - one, approach an RMP and possibly be involved in criminal proceedings under the POCSO Act, or two, approach an unqualified doctor for a medical termination of the pregnancy. If there is an insistence on the disclosure of the name of the minor in the report under Section 19(1) of POCSO, minors may be less likely to seek out RMPs for safe termination of their pregnancies under the MTP Act."



14. Having gone through the said judgment of the Supreme Court as well as a Single Judge decision referred to, it makes it clear that insofar as the termination of the pregnancy is concerned, apart from what has been provided under the provisions of the Act i.e., under Section 3, what are all the other circumstances under which such medical termination of pregnancy even beyond 24 weeks can be made depending upon the need that might be based on the medical report given by a team of doctors has been dealt with.

15. In the present case in hand, insofar as the gestation period of the pregnancy is concerned, it is only at the 10th week, therefore, it is certainly within the permissible limit of 20 weeks. Therefore, that there could be absolutely no impediment to going for terminate the pregnancy. However, insofar as the pregnant girl, the detinue, is concerned, since she is a minor, as her date of birth is 26.05.2006, for going for such a medical termination of pregnancy of minor girl, the written consent of the guardian is a must. Here, the mother of the detinue, viz., Rajathi, who has come all the way from Singapore to attend the case for the welfare of the detinue, as well as the petitioner, who is the present guardian and is taking care of the welfare of the detinue, have given such consent in writing today i.e., 12.04.2023 within the meaning of sub-section 4 of section 3 of the Act and that consent has been taken on record.

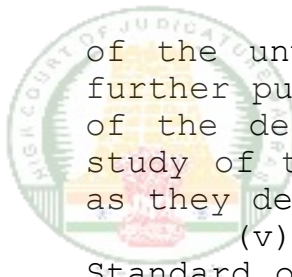
16. Considering the said consent given by the mother and grand-mother of the detinue victim girl and taking into account the factual as well as the legal position as has been discussed herein above, we are of the considered view that by having the future and welfare of the detinue minor girl in our mind, we feel that the following orders are more appropriate to meet the ends of justice. Accordingly, the following orders are passed:-

(i) That there shall be a direction to the Dean, Government Rajaji Medical College Hospital at Madurai to form a team of doctors consisting of Gynaecologist, Paediatrician and whoever other experts required for the termination process of the pregnancy of the detinue girl immediately and the said doctors team after diagnosing the pregnancy and the physical status of the detinue girl to undergo the termination process, fix the date and time of termination of the pregnancy and complete the same as quickly as possible.

(ii) For the aforestated purpose, since that would be taken care by the medical team headed by Dean of the hospital concerned within few days, till such time, the detinue girl shall be permitted to stay at the Home viz., Annai Sathya Home, Ramnad, for which, necessary arrangements shall be made by the respondent police.

(iii) The petitioner and the mother of the detinue viz., Mrs. Rajathi are hereby advised to take care of the detinue girl after the termination is over and during the period of this medical termination, which is going to be undertaken by the Medical Team as indicated above, the petitioner and the mother of the detinue shall monitor the situation and whatever the help that is needed by the detinue shall be provided by them.

(iv) It is also brought to our notice that the detinue girl was studying 10th Standard at the Government School, Parthipanur, Ramanathapuram District and she has discontinued the course because



of the unwanted episode referred to above. However, she is to further pursue the studies, therefore, the petitioner and the mother of the detainee girl shall take every endeavour for the continuous study of the detainee either at the same school or any other school as they decide.

(v) If the detainee girl wants to join and continue the X Standard or any other course in the same school or any other school for which application is given or request is made on behalf of the detainee by the petitioner or the mother of the detainee, that shall be accepted and admission shall be provided to the detainee girl in the school concerned. In this context, if it is a Government School, the District Education Officer concerned shall take care of the admission of the detainee girl and if it is a private school, the Correspondent of the school concerned shall take care of the admission of the detainee girl. This shall be scrupulously followed and the order shall be complied with regard to admission and further continuance of the studies of the detainee girl.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

13/04/2023

Sub Assistant Registrar(CS)

To

1. The Superintendent of Police,
Ramanathapuram District.
2. The Inspector of Police,
Parthibanur Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

1. The Dean,
Government Rajaji Hospital,
Madurai.
2. The District Education Officer,
Ramanathapuram.

ORDER DATED : 10/04/2023

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ORDER

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HCP(MD) . No.434 of 2023

Giving direction and etc.
as stated within.