

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

278

CWP-7125-2023

Date of Decision: 19.04.2023

MS. X AND ANR

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Rahul Bhargava, Advocate with
Ms. Ramandeep Kaur, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed to seek permission for termination of pregnancy of petitioner No.1, who is a rape victim at the hands of respondents No.4 and 5 regarding which an FIR No.407 dated 07.12.2022 has already been registered at Police Station Maqboolpura, District Amritsar for the commission of offences punishable under Sections 346, 376 read with Section 34 of the Indian Penal Code, 1860.

It has been averred in the petition that the petitioner No.1, aged 21 years is daughter of petitioner No.2 and fell prey to sexual assault at the hands of respondent No.4 and 5. As a result of aforesaid undesired incident, the petitioner No.1 became pregnant. FIR against respondents No.4 and 5 qua the incident in question already stands registered and they are facing trial. The petitioner No.1 herself is a major and has preferred the instant petition alongwith her father pointing out that she does not want to give birth to the

child conceived as a result of physical abuse. The continuation of unwanted pregnancy is likely to cause a great social embarrassment to the petitioner apart from the hardship which she is likely to face while bringing up the said unwanted child. It has further been averred in the petition that she wishes to continue her studies and wants to go abroad for the said purpose. The unwanted pregnancy will have an impairing effect on her future prospects.

The matter came up for hearing before this Court on 10.04.2023, when the following order was passed by this Court:

"The present petition has been filed for seeking permission to allow petitioner No.1- Victim in case FIR No.407, dated 07.12.2022 initially registered under Section 346 of the Indian Penal Code at Police Station Maqboolpura, District Amritsar (later on added Section 376 of the IPC) to get her 7 weeks' unwanted pregnancy terminated.

Learned counsel for the petitioners contends that the petitioner No.1 aged about 21 years had fallen to the predatory acts of respondent No.4-accused. The aforesaid FIR was thus registered against the said accused. However, the petitioner got pregnant as a result of the crime committed against her. It is further contended that as the pregnancy is a result of violation committed by the accused, she does not intend to give birth to the said child. Reference is made to provisions of Section 3 of the Medical Termination of Pregnancy, Act, 1971, which permits termination of such unwanted pregnancy after seeking permission from the Court.

It is also averred that the petitioner No.1 being a student herself, is not in a capacity to support or sustain the said child.

Counsel for the petitioner further contends that he does not wish to press the present petition against respondents No.4 and 5 at this stage.

Prayer is accepted.

Service of respondents No.4 and 5 is dispensed with at this stage.

Notice of motion to remaining respondents.

Mr. Deepanjay Sharma, DAG, Punjab, who is present in Court, accepts notice on behalf of the remaining respondents and prays for some time to complete instructions and file response, if necessary.

Adjourned to 19.04.2023.

In the meantime, the petitioners are directed to appear before the Civil Surgeon, Amritsar on 12.04.2023 at 11.00 A.M., whereupon the petitioner No.1 shall be subjected to examination by the Committee constituted to determine the claim of the petitioners and to report whether such medical termination of pregnancy is recommended to be carried out in the circumstances of the present case or not.

Reply to the petition alongwith report be submitted on or before the adjourned date positively.

Copy of this order be supplied to the counsel for the respective parties under the signatures of Bench Secretary of this Court."

In terms of the aforesaid order, the petitioner No.1 had appeared before the Medical Board, which conducted examination of the petitioner No.1 and has recommended as under:

"As per lab investigations dated 12/04/2023 SID- E4 from Civil Hospital, Amritsar, H.b.=11.7g% (all other investigations are within normal limits) and viral marker done at Civil Hospital, Amritsar on dated 18.04.2023 are found to be Negative. The USG (Abdomen) done at Civil Hospital, Amritsar on dated 18.04.2023 i.e. today. The Ultrasound report shows period of Gestation of 10 weeks 0 day. So, As per The Medical Termination of Pregnancy Act, 1971 and after going through the medical examination of the patient and her investigation, there is nothing to suggest that patient cannot be taken for medical termination of pregnancy on

humanitarian grounds. The Board members are of the opinion that MTP should be performed timely to avoid any further complications."

The affidavit alongwith the report of Medical Board has been filed today in Court. The same are taken on record.

It is apparent from the perusal of aforesaid report that the petitioner can be taken for medical termination of pregnancy on humanitarian grounds and that there would be no danger to the life of the petitioner in the event of carrying out the abovesaid termination of pregnancy.

This Court has already considered the issue of premature of termination of pregnancy in the matter of "**Anita Vs. State of Punjab and another**" bearing **CWP No.17803-2022** decided on **16.08.2022**. The relevant extract of the same is reproduced hereinafter below:

"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.”

Taking into consideration the background of the petitioner under which she has conceived the child coupled with the report of Medical Board recommending the MTP without any further delay and the fact that such termination is not likely to endanger the life the petitioner No.1-the victim herself and also the fact that victim will have to undergo psychological distress on account of current situation resulting in social retribution in the event of carrying the unwanted pregnancy, the present petition is allowed.

In the event of the petitioner being ready and willing to appear before the Civil Surgeon, Amritsar within a period one week from today and completing all types of formalities contemplated under The Medical Termination of Pregnancy Act, 1971 for undergoing the abovesaid procedure, the respondent-Authorities shall undertake the necessary medical procedure for

termination of unwanted pregnancy of the petitioner No.1. The petitioner No.1 would also be at liberty to espouse her financial status before the authorities concerned and would be entitled to the benefits under the prevalent schemes in accordance with the applicable rules.

The petition stands allowed accordingly in terms as aforesaid.

Copy of this order be given to the learned Counsel of the parties under the signatures of the Bench Secretary of this Court.

19.04.2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

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