

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

282

CWP-8091-2023

Date of decision: 27.04.2023

LALITA KUMARI (MINOR) AND OTHERS

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present:- Mr. Nirmaljeet Singh Sidhu, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. The instant petition has been filed under Article 226 of the Constitution of India for seeking issuance of a writ in the nature of Mandamus directing the respondent to terminate the pregnancy of the petitioner No.1-Lalita Kumari (minor).

2. Learned counsel appearing on behalf of the petitioners contends that petitioner No.1-Lalita Kumar is the minor daughter of the petitioners No.2 & 3 and was abducted by Rajinder Singh son of Mohan Lal resident of Village Pilkhan Wala, Manglaur, Tehsil Bilaspur, District Yamuna Nagar. The minor daughter of the petitioner approached this Court through CRWP-1198 of 2023 seeking protection of her life and liberty. Being a minor, her custody was handed over to respondent No.3 vide order dated 15.02.2023 passed by this Court in the above Criminal Writ Petition. The petitioners No.2 & 3 and

CWP-8091-2023

-2-

maternal grand parents upon coming to know about the fact that the minor Lalita Kumari (petitioner No.1) has conceived pregnancy approached this Court by means of filing a miscellaneous application for seeking termination of pregnancy. The said application was withdrawn on 27.03.2023 to file an appropriate petition for the same cause of action.

3. Being worried about the well being of the minor daughter as also the fact that the child is conceived as a result of offence committed against her body, and that too when she herself is a minor FIR No.0050 dated 31.01.2023 had also been registered under Sections 363; 366-A of the IPC at Police Station Naraingarh, District Ambala. The victim being a minor herself is in no capacity to bring up the child, who would in any case be a reminder to the mother of the offence committed against her. Apart from the above, the child would also live with a stigma for his entire life which may not be good for the mental health & well being of the child.

4. Vide order dated 20.04.2023, passed by this Court, the Child Welfare and Development Officer, Panchkula was directed to interact with the minor and to submit a report regarding her decision qua giving birth to the child and the matter was adjourned for 21.04.2023.

5. In response, there to Ms. Nidhi Malik, Legal-cum-Probation Officer has brought the report from District Child Protection Unit, Panchkula. In the statement taken by the Legal-cum-Probation Officer, District Child Protection Unit, Panchkula, the petitioner No.1

CWP-8091-2023

-3-

i.e. Lalita Kumari (minor) has expressed her desire for getting the MTP conducted. The same stands verified by the Chairperson/Member Child Welfare Committee, Panchkula.

6. The case was thereafter taken up for hearing on 21.04.2023 when the following order was passed:

“The present petition has been filed under Articles 226/227 of the Constitution of India for seeking permission for medical termination of the pregnancy of petitioner No.1-Lalita Kumari (Minor).

Pursuant to the order dated 20.04.2023, Ms. Nidhi Malik, Legal-cum-Probation Officer has brought the report from District Child Protection Unit, Panchkula which is taken on record. In the statement taken by the Legal-cum-Probation Officer, District Child Protection Unit, Panchkula, the petitioner No.1 i.e. Lalita Kumari (minor) has shown her desire for getting the MTP conducted. The same also stands verified by the Chairperson/Member Child Welfare Committee, Panchkula.

Notice of motion.

Mr. Pankaj Mulwani, DAG, Haryana appears and accepts notice on behalf of respondents No.1 & 3.

In the meantime, the petitioners are at liberty to appear before the Civil Surgeon, Panchkula on 24.04.2023 at 11:00 A.M., alongwith Ms. Nidhi Malik, Legal-cum-Probation Officer, Panchkula as well as other officials of respondent No.3, whereupon the petitioner No.1 shall be subjected to the examination by the Medical Board constituted to examine and to report whether such medical termination of pregnancy is recommended to be carried out in the circumstances of the present case or not.

Adjourned to 27.04.2023.

Report of the Civil Surgeon, Panchkula be submitted on or before the adjourned date positively.

A copy of this order be supplied to the counsel for the respective parties under the signatures of Bench Secretary of this Court.”

7. Pursuant to the aforesaid order, a Medical Board was constituted on 21.04.2023 and after examination of the minor-Lalita Kumar (petitioner No.1), the Medical Board, comprising of the 04 Senior Medical Officer from the Civil Hospital, Sector-6, Panchkula have recommended that the minor victim can undergo termination of pregnancy as per the MTP Act and the rules contained thereunder. The relevant part of the report received from the Medical Board constituted by the Civil Surgeon, Panchkula is extracted as under :

“To

*Principal Medical Officer
Civil Hospital, Sector-6,
Panchkula.*

Sub: Regarding Medical examination report of Lalita Kumari in context of CWP-8091 of 2023 as “Lalita Kumari versus State of Haryana by Medical Board for MTP.”

With reference to the subject cited above.

As per the instructions received from Civil Surgeon, Panchkula vide letter No. FW/PKL/2023/05 Dated 21.04.2023; examination of Lalita Kumari was done by the undersigned at Sukoon Centre, Civil Hospital, Sector-6, Panchkula in the presence of Ms. Nidhi Malik, Legal cum Probation Officer on 24.04.2023 at 11:15 am. After examination, the diagnosis of the board is that Lalita, 16 years old, unmarried Primigravida at 12+5 weeks of gestation.

After conducting Medical examination of Ms. Lalita Kumari, the members of MTP Medical Board are of the opinion that Medical Termination of Pregnancy can be done under the MTP Act in this particular case.

Dr. Rajdeep Kaur, Gynaecologist Dr. Gagan Singla, Pediatrician

Dr. Deepshikha, Gynaecologist Dr. Monisha Modi, Sonologist

Dr. Sneh Singh, Dy. Civil Surgeon (FWP)

8. The said report has been seen today and the same is taken on record.

9. 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.

10. 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 inseparable 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”.

CWP-8091-2023

-6-

11. 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.”

12. 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.

13. Taking into consideration, the background under which the victim has conceived the pregnancy; and report of the Probation Officer coupled with the report received from the Medical Board recommending the medical termination of the pregnancy suffered by the minor victim; that the fact it is not likely to endanger the life of the victim herself and taking into consideration that the victim herself has to undergo a psychological distress on account of the current situation apart from the psychological trauma of carrying a pregnancy as a result of the assault on her bodily integrity, the present petition is allowed.

14. It is taken into consideration that the victim is ready and

CWP-8091-2023

-7-

willing to appear before the Civil Surgeon, Civil Hospital, Panchkula on or before 02.05.2023 and is also ready and willing to fulfill all the necessary formalities contemplated in the statute for undergoing the procedure under the MTP Act.

15. In view of the above, the petitioners No.2 & 3 is permitted to produce her minor daughter-Lalita Kumari (Petitioner No.1-herein) before the Civil Surgeon-Civil Hospital, Panchkula on or before 02.05.2023 and upon completion of all the necessary formalities, the said respondent shall undertake the necessary medical procedures.

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.

The Civil Writ Petition is accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 27, 2023

Vishal sharma

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