

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

280

CWP-13256-2023
Date of decision: 19.07.2023

RPetitioner

VERSUS

STATE OF HARYANA AND ANOTHERRespondents

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

Present: - Mr. Neeraj Yadav, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Amit Jhanji, Sr. Advocate with
Ms. Eliza Gupta, Advocate, for respondent-PGIMER,
Chandigarh.

VINOD S. BHARDWAJ, J. (Oral)

The present petition had been filed for directing the respondents to conduct medical examination of the petitioner and to thereafter carry out a medical termination of the pregnancy.

2. It had been argued by the counsel for the petitioner that she was subjected to rape by one accused namely Gaurav son of Rakesh resident of Village Sham Nagar, District Rewari regarding which FIR No. 120 dated 06.05.2023 had been registered at Police Station Kosli for offences punishable under Section 376 (2) (n) read with Section 506 IPC. The petitioner became pregnant as a result of the said assault. She approached

this Court for seeking termination of the pregnancy after she already had an advanced pregnancy of about 26 weeks. The matter was listed before this Court on 07.06.2023 when notice of motion was issued for 04.07.2023 and State was directed to file its response. An application for pre-ponement of the date of hearing was moved which was allowed vide order dated 13.06.2023 and the matter was pre-poned to 19.06.2023. On the said date of hearing, the Post Graduate Institute of Medical Education & Research, Chandigarh, PGIMER was directed to constitute a Medical Board under the aegis of its Director so as to examine the petitioner and to submit a report. As the report had not been received on the adjourned date i.e. 23.06.2023, the matter was ordered to be listed for 27.06.2023 when the said report was brought to the notice of the petitioner wherein they had opined that the termination of the pregnancy cannot be allowed. The relevant part of the recommendation of the Medical Board of PGIMER, Chandigarh is extracted as under:

<i>S.No.</i>	<i>Report</i>	<i>Opinions on the findings</i>
1.	<i>As per ultrasound done on 21.06.2023, there is single live intra-uterine fetus with POG 27 wk weighing 985=146 grams. There is no congenital malformation seen.</i>	<i>Termination of pregnancy is not allowed.</i>

3. The matter was, thereafter, taken on 03.07.2023 on request of counsel for the petitioner. The Medical Board of the PGIMER, Chandigarh was directed to clarify the reasons for not recommending termination of the pregnancy. The case was fixed for 10.07.2023. A report dated 04.07.2023 was received from the Medical Board wherein they recommended as under:

“5. *Opinion by Medical Board for termination of pregnancy :*

a) *As per the Medical Termination of Pregnancy (MTP) Amendment Act October 2021, section-3, sub section- 3A, clause- a (i)," to allow or deny termination of pregnancy beyond twenty-four weeks of pregnancy under sub-section (2B) of the said section, only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the **foetal malformation has substantial risk of it being incompatible with life** or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped". The previous order from the Hon'ble Punjab & Haryana High court dated 19.06.2023 was received in Medical Superintendant office, PGIMER, Chandigarh on 20.06.2023 wherein PGIMER was directed to constitute a Medical Board in reference to CWP No. 13256 of 2023 titled as R Vs State of Haryana. As per ultrasound done on 21.06.2023, there was single live intra-uterine fetus with POG 27 wk weighing 985 ± 146 grams. There was no congenital malformation seen. "Hence, the Permanent Medical Board **did not recommend** termination of pregnancy at that stage as the fetus had no congenital malformation and the patient was medically fit to deliver at term."*

b) *Fetus will be born alive and will develop complication of prematurity if terminated at this gestation.*

c) *The Patient is advised to get regular obstetric check-ups done and is further advised to get institutional delivery done"*

4. On the adjourned date of hearing i.e. 10.07.2023, there was no representation on behalf of the petitioner. The case was adjourned to be taken up on 11.07.2023. The Doctors from the PGIMER, Chandigarh were present in person on the said of hearing, however, there was again no representation on behalf of the petitioner due to which the hearing was adjourned to 14.07.2023. On the above said date, counsel through whom the

petition had been filed, sought withdrawal of his Power of Attorney pleading no instructions. The matter was thus adjourned for today.

5. Mr. Neeraj Yadav, Advocate entered appearance on behalf of the petitioner and conceded that in view of the report furnished by the PGIMER, Chandigarh, medical termination of the pregnancy may not be possible at this juncture. He, however, submits that the petitioner may be provided medical assistance and Psychiatric support.

6. The law recognizes the autonomy of a person to determine as to whether she wants pregnancy or not. The totality of circumstances as well as the Medical report against the termination of the pregnancy not being in the welfare of the foetus, which would nonetheless be born alive on account of its advanced stage. The unrebutted opinion of the doctors that any attempt at termination of pregnancy at this stage, is likely to lead to a premature delivery and affecting neurotic development of the unborn child apart from exposing mother to danger run against balance of convenience and equity which does not find any support in law as well. The circumstances do not give rise to compulsive and convincing reasons where the pregnancy must be terminated. The counsel for the petitioner has fairly conceded the prayer for medical termination of the pregnancy. He further submits that the petitioner, however, does not intend to retain the child which shall be a constant reminder to her of violation of her modesty and a source of permanent social ostracism. The same shall also gravely hamper her future prospects. He further submits that State be directed to take custody of the child on being born and extend due medical care.

7. Counsel appearing on behalf of the respondent-State has no objection to the aforesaid prayers.

8. Accordingly, the prayer of the petitioner for termination of pregnancy is thus dismissed as not pressed at this stage. However, in the larger interest of the petitioner as well as the minor unborn child, it is directed as under:

- i) The Civil Surgeon/Chief Medical Officer, Rewari is directed to ensure that all necessary medical facilities are made available to the petitioner, without the payment of fee, charges or expenses of any nature and to ensure that the delivery takes place in a safe environment.
- ii) The privacy of the petitioner shall be maintained at all stages and identity of the petitioner be not divulged in the course of hospitalization and treatment.
- iii) The child, on birth, may be handed over to the Child Welfare Committee of District Rewari and the petitioner shall fulfill all such necessary documentation and formalities as may be so required in law for handing over custody of the said child to the Child Welfare Committee.
- iv) The said Child Welfare Committee, Rewari shall take care of all needs and facilities of the child.
- v) The petitioner has no objection to the said child to be given in adoption by the State agency to the willing parents in accordance with law. Permission is thus granted for giving the child in adoption to the willing prospective parents, in accordance with law.

vi) The above said directions are without prejudice to any other rights and entitlement of the petitioner under applicable policies/guidelines for financial assistance/rehabilitation.

The petition is accordingly disposed of.

(VINOD S. BHARDWAJ)
JUDGE

JULY 19, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No