

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-13409-2023

Reserved on: 19.06.2023

Pronounced on: 27.06.2023

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...Petitioner

VS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Manu Sachdeva, Advocate with
Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Pardeep Prakash Chandar, Senior DAG, Haryana.

VIKRAM AGGARWAL, J

The present writ petition has been preferred under Article 226 of the Constitution of India by a 26 years old rape victim seeking directions to the respondents to get her pregnancy, which she acquired on account of rape having been committed upon her by respondent No.5, terminated.

2. As per the averments made in the writ petition, FIR No.19 was registered at Police Station Ram Nagar, Karnal on 28.01.2023 under Section 346 IPC on the statement of maternal uncle of the petitioner. It was reported by the complainant that his niece i.e. the present petitioner had been missing from home since the evening of 27.01.2023. He expressed suspicion upon respondent No.5. The petitioner was recovered on 09.04.2023 from Rajpura, District Patiala. On 10.04.2023, her statement under Section 164 Cr.P.C. was recorded wherein she stated that respondent No.5 had kidnapped her and had also established forcible physical relations with her. Under the circumstances, Section 346 was deleted and Sections 343, 376 (2) (n), 506 and 365 IPC were added. The petitioner became pregnant and since, she did not want to retain the pregnancy, file the present writ petition seeking

appropriate directions to the respondents for termination of the same. The petitioner placed reliance upon ultrasound report dated 06.06.2023 (Annexure P-2) as per which there was an intrauterine pregnancy with foetus corresponding to 9 weeks 6 days.

3. The writ petition came up for hearing before a Coordinate Bench (vacation bench) on 09.06.2023 and the following order was passed:-

“1. Through the instant writ petition, a 26 years old rape victim craves indulgence of this Court, to impart requisite directions to the official respondent(s) concerned, to get her pregnancy terminated, which is a result of sexual assault. The petitioner has also sought issuance of direction(s) upon the official respondent(s) concerned to collect her DNA sample and to send the same to the Forensic Laboratory concerned for its examination.

2. The learned counsel for the petitioner submits that the Medical Termination of Pregnancy (Amendment) Act, 2020, prescribes the upper limit of medical termination of pregnancy upto 24 weeks, for certain categories of women, including rape victims.

3. Notice of motion.

4. Mr. Parveen Kumar Aggarwal, DAG, Haryana, waives service on behalf of the respondents No.1 to 4.

5. Court notice is ordered to be served upon the respondent No.5.

6. Considering the overall welfare of the petitioner, at this stage, this Court deems it appropriate to direct the respondent No.2- Superintendent of Police, Karnal, to produce the petitioner before a team of expert doctors, at P.G.I.M.S., Rohtak, whereupon, the latter shall medically examine the petitioner and thereafter, shall furnish a detailed report regarding the age of the fetus as well as the mental and physical health of the petitioner. Since the case at hand is very sensitive and requires emergent

consideration, therefore, the respondent No.2 is directed to make compliance with these directions, within a period of four days from today and thereupon, he shall submit a detailed report on affidavit, before this Court on the subsequent date of hearing, making disclosures therein to the above effect and the said report shall also carry disclosure qua the allegations, as levelled by the prosecutrix, and also the details of investigation.

7. List on 14.06.2023 for awaiting the report of the respondent No.2 and for further consideration.”

4. Thereafter on 14.06.2023, status report was filed in the Court and the matter was posted by another Coordinate Bench (vacation bench) for 19.06.2023.

5. Learned counsel for the petitioner submitted that in view of the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the ‘MTP Act’) and the status report filed by the respondents coupled with the report of the Board of Doctors (Annexure R-1), the writ petition deserves to be allowed and a direction deserves to be issued to the respondents to get the pregnancy of the petitioner terminated. In support of his contentions, learned counsel placed reliance upon a judgment of this Court in the case bearing **CWP No.6782 of 2021 titled as M Vs. State of Haryana and others**, decided on 26.03.2021.

6. Learned counsel representing the State of Haryana, on the other hand, simply referred to the status report which is basically a reiteration of the facts and makes a reference to the report dated 10.06.2023 of the Board of Doctors.

7. I have considered the submissions made by learned counsel for the parties.

8. Before going to the merits of the case, it would be appropriate to refer to the provisions of Section 3 of the MTP Act, as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021 (8 of 2021), which provides for when pregnancies may be terminated and lays down as under:-

“Section 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[(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 twenty weeks, if such medical practitioner is, or***

(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 purposes 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 purposes of clauses (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.

(2A) 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.

(2B) 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.

(2C) 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.

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

(a) a Gynaecologist;

(b) a Paediatrician;

(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

of the pregnant woman's actual or reasonably 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 ill person, shall be terminated except with the consent in 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."

A perusal of the above provision shows that where the length of the pregnancy does not exceed twenty weeks and the continuance of such a pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health and further wherein a pregnancy has 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, the same may be terminated. It, therefore, essentially means that the case of the present petitioner is covered by the provisions of Section 3 of the MTP Act.

9. Recently, a three Judges Bench of the Hon'ble Supreme Court of India was dealing with the issue of termination of pregnancy of an unmarried woman. While examining the provisions of the MTP Act in this case i.e. ***X Vs. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and another, 2022 AIR (SC) 4917***, the Hon'ble Apex Court came to the conclusion that the provisions do not require to be given a narrow interpretation. The Hon'ble Apex Court examined the entire law on the subject alongwith the statutory provisions and came to the following conclusion:-

"110. If women with unwanted pregnancies are forced to carry their pregnancies to term, the state would be stripping them of the right to determine the immediate

and long-term path their lives would take. Depriving women of autonomy not only over their bodies but also over their lives would be an affront to their dignity. The right to choose for oneself – be it as significant as choosing the course of one’s life or as mundane as one’s day-to-day activities – forms a part of the right to dignity. It is this right which would be under attack if women were forced to continue with unwanted pregnancies.

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116. In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the state. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical wellbeing also injures the dignity of women.

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118. It seems to us that to give Rule 3B a restrictive and narrow interpretation would render it perilously close to holding it unconstitutional, for it would deprive unmarried women of the right to access safe and legal abortions between twenty and twenty-four weeks if they face a change in their material circumstances, similar to married women.”

10. In the case of ***M Vs. State of Haryana*** (supra), a Coordinate Bench of this Court also dealt with an issue wherein the petitioner who was also a rape survivor had sought directions to the respondents therein to terminate her pregnancy which was beyond the period of 20 weeks. After examining the statutory provisions and the law on the subject, the

Coordinate Bench disposed of the petition by directing the Medical Board of PGIMS, Rohtak, to examine whether there was any risk to the life of the petitioner therein in carrying out the termination of pregnancy and if the Board came to the conclusion that there was no risk to the life of the petitioner, the Board would make immediate arrangements for termination of the pregnancy of the minor petitioner.

11. Reverting to the facts of the present case, the petitioner herein is a major aged about 26 years and as per the report of the Medical Board (Annexure R-1), the gestational age of the foetus as on 10.06.2023 was 10 weeks 5 days. The report dated 10.06.2023 submitted by the Medical Board of the Postgraduate Institute of Medical Sciences, Rohtak (hereinafter referred to as the 'PGIMS Rohtak') is reproduced herein below:-

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The meeting of special medical board was held on 10.06.2023 at 2:00 PM in Dept. of Obst & Gynae Office.

The Detailed Examination Report is as under:

On Examination, patient is conscious, alert & oriented to time, Place, person

Vitals are stable, BP 100/60 mmHg, PR 92/Minute, patient is afebrile to touch

Cardio Vascular and Respiratory system: with in Normal limit.

Per abdomen examination : Soft, Non-tender, No Hepatosplenomegaly, Uterus palpable approximately 12 weeks size

Per vaginum examination : cervix pointing backwards, Uterus anteverted, 10 to 12 weeks size

No adnexal mass palpable

Patient is not suffering from disturbed mental health/disorder.

Ultrasound Report: single intrauterine fetus with cardiac activity present

CRL: 33.5 mm corresponding to gestational age 10 weeks 5 days
The mental and physical health is normal.”

Keeping in view the fact that the case of the petitioner is covered by the provisions of Section 3 of the MTP Act and also in view of the report of the Medical Board, the present petition is disposed of with a direction to the State of Haryana/Medical Superintendent, PGIMS, Rohtak to make immediate arrangements for the medical termination of the pregnancy of the present petitioner in accordance with the provisions of the MTP Act. It would be needless to mention here that no delay should be caused in carrying out the requisite formalities and it be ensured that there is no risk to the life of the petitioner on account of unwarranted delays or otherwise.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 27.06.2023
Hemant/mamta

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes