

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CWP-19052-2023
Date of decision: 01.09.2023

RAM JASPetitioner

VERSUS

STATE OF PUNJAB AND OTHERSRespondents

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

Present: - Mr. Dhiraj Chawla, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

Prayer in the present petition is for seeking quashing of the order dated 23.08.2023 (Annexure P-6) passed by the Chief Judicial Magistrate, Fazilka declining permission for medical termination of the pregnancy of the minor rape victim Ms. M on the ground that the pregnancy is more than 24 weeks.

2. Counsel for the petitioner contends that minor daughter of the petitioner, aged 17 years, is a rape victim and that she got impregnated as a result of the aforesaid violation of her modesty. FIR No. 82 dated 24.07.2023 has been registered against the accused/offender for offences punishable under Section 376-D/450/506 of the Indian Penal Code, 1860

read with Section 6 of the Prevention of Children from Sexual Offences, Act, 2012 at Police Station Bahawala, Fazilka. Since the daughter of the petitioner was pregnant as a result of the above sexual assault, the said matter was brought to the notice of the Child Welfare Committee, Fazilka. It was thus taken up before the District & Sessions Judge, Fazilka through the aegis of the Child Welfare Committee, Fazilka. Whereupon the same was referred to the District Legal Services Authority, Fazilka. The statement of the petitioner as well as his minor daughter for termination of the unwanted pregnancy, which is a tormentous reminder of the offence committed against the modesty of the victim, was also recorded. Not allowing to terminate such pregnancy would not only be un-congenial to her physical and mental health but is also harsh to the unborn child who is likely to face social incarceration and lack of acceptance on being born.

3. Counsel for the petitioner contends that Section 3 (2)(i) of The Medical Termination of the Pregnancy Act, 1971 stipulates that a pregnancy may be terminated by a registered medical practitioner where continuance of such pregnancy involves the risk to life of the pregnant women or of grave injury to her physical or mental health. Further, it has been pointed out in Explanation 2 to the said Section, for the purposes of grave injury to physical or mental health, any pregnancy which is caused by rape and the anguish so caused by pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant women.

4. The matter came up before this Court on 29.08.2023, when the following orders were passed.

“Learned counsel for the petitioner inter alia contends that the petitioner is a father of a minor daughter, who is a rape

victim and got pregnant as a result of the offence committed against her. It is averred that an application for medical termination of pregnancy was moved before the Chief Judicial Magistrate, Abohar, whereupon a report was called from the Board of Doctors. The said report is appended as Annexure P-5 alongwith the present petition. As per the Board of Doctors' report, the pregnancy is more than 24 weeks old and the opinion of the State Medical Board is required to be taken as per the Medical Termination of Pregnancy (Amendment) Act, 2021.

Notice of motion.

Mr. Saurav Verma, Addl. A.G., Punjab accepts notice on behalf of the respondents and prays for some time to complete instructions.

Adjourned to 01.09.2023.

Let the daughter of the petitioner (Victim) appear before the Medical Superintendent of respondent No.3- Guru Gobind Singh Medical College & Hospital, Faridkot, whereupon she may be subjected to examination by the State Medical Board and report of the State Medical Board be furnished before this Court on or before the adjourned dated i.e. 01.09.2023.

Copy of this order be given to the counsel for the respective parties under the signatures of the Bench Secretary of this Court for necessary compliance.

A copy of this order be forwarded by the State Counsel also to respondent No.3 today itself.”

5. Pursuant to the said order, the daughter of the petitioner appeared before the Medical Board constituted by the respondent No.3-Guru Gobind Singh Medical College and Hospital, Faridkot. A report bearing Memo No.M.S./G.A/(110)/2023/18522 dated 31.08.2023 has been handed

over today by the State after receiving the same from ASI Rajwinder Singh wherein it is recorded as under:

6. Opinion by Medical Board for termination of Pregnancy:

a) Allowed/Denied-Allowed.

Justification for the decision: In compliance to the direction issued by the Hon'ble Judge, Vinod S. Bhardwaj vide orders dated: 29.08.2023 in CWP No.19052-2023 Medical Board was constituted by the Medical Superintendent, GGS Medical College & Hospital, Faridkot for medical Examination. As per the provisions of the section 3 (2C) and 3(2D) of the Medical Termination of Pregnancy (Amendment) Act, 2021, of the principal, The Medical Termination of Pregnancy Act, 1971, the Medical Board is of the opinion that the termination of the pregnancy can be done.

6. It is apparent from the perusal of the above that the petitioner can be subjected to a safe procedure for medical termination of pregnancy as per provisions of Section 3(2C) and 3 (2D) of the Medical Termination of Pregnancy (Amendment) Act, 2021. The above said report is taken on record as Annexure 'X'.

7. Counsel for the petitioner further places reliance upon the judgment of this Court in **CWP-25508 of 2022** decided on **21.11.2022** in the matter of **"Ms. X versus State of Haryana and others"** where under similar circumstances, termination of pregnancy was allowed.

8. Counsel for the respondent-State does not dispute the report as received from the Medical Board and also the preposition laid down in the aforesaid judgment including the statutory provisions in relation to pregnancy as an outcome of rape, being treated as grave injury.

9. Taking into consideration, the totality of circumstances mentioned above, the present writ petition is allowed. The order of the Chief Judicial Magistrate, Fazilka dated 23.08.2023 is set aside. The petitioner, alongwith his minor daughter shall appear before the Medical Superintendent of the Guru Gobind Singh Medical College and Hospital, Faridkot on **Monday i.e. 04.09.2023** whereupon the medical termination of the pregnancy shall be carried out by the doctors as per law, after recording the consent of the petitioner as well as his minor daughter.

10. The petitioner would be at liberty to espouse his financial status before the authorities concerned and be entitled to the benefit under the prevalent schemes and in accordance with the Rules.

11. Considering that this is a case of rape of a minor and the consequential pregnancy as an outcome thereof, the tissues of the foetus may be preserved for future reference/purposes of investigation in the pending case, if so advised.

12. A copy of this order be handed over to the learned counsel appearing on behalf of the respective parties under the signature of Bench Secretary of this Court.

(VINOD S. BHARDWAJ)

JUDGE

SEPTEMBER 01, 2023

Vishal Sharma

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