

June 24, 2024
Sl. No.1
Court No.9
s.biswas

WPA 16157 of 2024

X
vs.
The State of West Bengal and others

Mr. Ramkrishna Bhattacharyya
Mr. Kaushik Choudhury
... for the petitioner
Mr. S. Bandopadhyay
... for the State

1. To maintain the dignity and privacy, the petitioner will be named as X. Liberty is granted to correct the cause title.
2. The petitioner prays for a direction of this court permitting termination of pregnancy on the ground that such situation occurred under false promise. The petitioner being a young girl of 19 years was allegedly misled into the relationship and was not responsible for its consequences.
3. It has been alleged before the police authorities that such incident occurred on account of force. However, this court is not inclined to discuss the above issue, which is part of the investigation by the police authorities.
4. This court is mindful of the fact that the young girl who is barely 19 years old and is a college student, deserves the protection of the law. She falls within the exceptions provided by law. She is justified in seeking the reliefs as per the prayers in this writ petition. The pregnancy is unwanted

and the conception was not under proper circumstances. The chances of grave mental injury cannot be ignored.

5. Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 provides as follows: -

“(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 substantial risk that if the child was born, it would suffer from any serious physical or mental abnormality.”

6. Explanation 2 of the above provision deals with a situation where the anguish of the circumstances leading to the pregnancy, can be

presumed to constitute grave injury to the mental health of the pregnant woman.

7. The consequential conception by the petitioner, under the circumstances elaborated in the writ petition, persuades this Court to presume that continuation of the pregnancy would cause grave injury to the mental health of a young girl. Not only is it important to recognize the reproductive choice of the petitioner, but it is equally important to recognize that a 19-year-old unmarried mother, is neither socially, nor mentally nor economically equipped to accept the consequences and responsibilities of such pregnancy.
8. Even without commenting on the allegation that the act was one of force, (which is the subject matter of a criminal investigation), the young adult could not be forced to suffer the consequences of an act which may have been committed during a situation when the decision-making faculty was not alive or the petitioner was under some overpowering influence.
9. The Hon'ble Apex Court, in *X v. Health & Family Welfare Department*, 2022 SCC OnLine SC 905 held that The Medical Termination of Pregnancy Act, 1971 has "recognized the reproductive choice of a woman and her bodily integrity and autonomy. Both these rights embody the notion

that a choice must inhere in a woman on whether or not to bear a child.” The Hon’ble Apex Court in its judgement has also placed emphasis on the judgement of the Bombay High Court in High Court on its Own Motion v. State of Maharashtra 2017 Cri LJ 218 (Bom HC), wherein the Hon’ble Court observed inter alia, that “If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health.”

10. Furthermore, this Court relies on the principles laid down by the Hon’ble Apex Court in Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1, wherein the Hon’ble Court held inter alia that “There is no doubt that a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India.”

11. Under such circumstances and drawing reliance from certain decisions passed by the Hon’ble Apex Court and by this Court, this Court is of the view that in order to preserve the mental peace, privacy, social standing and bodily dignity of the petitioner, the prayer for termination of pregnancy should be allowed.

12. The continuation of such pregnancy would not only cause a burden on the petitioner, but would leave her traumatized if the pregnancy is allowed to reach its full term against her wishes.
13. Learned advocate for the State submits that the petitioner has already been examined by the Superintendent of Raiganj Medical College, the respondent no.5 herein.
14. Learned advocate for the State has submitted a copy of the FIR. The accused has been arrested and the preliminary investigation revealed that the petitioner had an affair with the accused who had assured marriage and had entered into a physical relationship. Later, he denied to marry the petitioner. The investigation is going on.
15. Under such circumstances, the writ petition is disposed of with a direction upon the Superintendent of Raiganj Medical College and another registered medical practitioner of his choice, to form a team and to examine the petitioner as per Section 3(2)(b) of The Medical Termination of Pregnancy Act, 1971, within 24 hours from date. If the team is of the view that the termination of pregnancy would not endanger the life of the petitioner, the pregnancy shall be terminated within the next 24 hours. The petitioner is at present, in the 23rd week of her pregnancy.

16. This order shall not have any influence on the investigation which is going on.

17. All parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)