

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.2060 OF 2024

A (Mother of X) Petitioner
versus
1. The State of Maharashtra
2. The State of Maharashtra
3. J.J.Group of Hospitals and Grant Medical College,
Mumbai. Respondents

Mr.Ashley Cusher with Miss.Pooja Phagnekar, Advocates for
Petitioner.
Mrs.M.P.Thakur, AGP, for Respondents.

CORAM : PRAKASH D. NAIK AND
N.R.BORKAR, JJ.

DATE : 16th February 2024

PC :

1. Petitioner is mother of the victim child. The victim was subjected to sexual assault. The FIR was registered with Ganeshpuri Police Station vide C.R No.20 of 2024 for offences under Sections 376, 276(2)(l), 276(2)(n) of Indian Penal Code, Sections 4, 8, 12 of Protection of Children from Sexual Offences Act, 2012. The victim is aged around 15 years. Petitioner has prayed that termination of fetus of the Petitioner's daughter be allowed. Petitioner has also stated that Petitioner's daughter is presently pregnant of 30 weeks and 3 days as of 12th February 2024. The victim is suffering from mental agony.

2. On 13th February 2024 we passed the following order :

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1. Mentioned out of turn.
2. The petitioner is the mother of the victim. The victim is aged around 15 years.
3. The First Information Report was lodged by the petitioner with Ganeshpuri Police Station vide FIR No. 20 of 2024 for offences under Sections 376, 376(2)(i), 376(2)(n) and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act. The victim is pregnant. She is minor.
4. The petitioner has prayed that termination of fetus of petitioner's daughter be allowed at Vitthal Sayana General Hospital, Thane or J. J. Group of Hospitals and Grant Medical, Mumbai.
5. Learned Advocate for the petitioner submitted that the victim has completed thirty weeks and six days of pregnancy. It is submitted that the victim has been admitted at Vitthal Syana General Hospital, Thane. The petitioner's daughter is victim of rape. Since the victim is hospitalized at aforesaid hospital at Thane, the victim may be examined at same hospital by Medical Board constituted under the Medical Termination of Pregnancy Act.
6. Learned APP, on instructions, submitted that Medical Board has been constituted in District Thane under the provisions of MTP Act.
7. Since the victim is in hospital at Thane, for the convenience of victim, we direct that a Medical Board constituted under the MTP Act shall examine petitioner's daughter in the same hospital immediately by tomorrow morning i.e., on 14.02.2024 and submit the report to this Court on or before 15.02.2024 with opinion about termination of fetus of victim. Report be submitted in sealed cover.
8. List the matter on 15.02.2024 (HOB).

3. Pursuant to the order dated 13th February 2024 the victim child has been examined by the members of District Medical Board. Learned AGP tendered the report dated 15th February 2024

submitted by Medical board in compliance with order dated 13th February 2024. We have perused the report. We also permitted learned counsel for Petitioner and learned AGP to peruse the report. The report indicate that the victim is pregnant of 30 weeks and 1 day as on the date of examination. The report indicate that risk of termination of pregnancy is not higher than the risk at the time of full term delivery and after termination baby can be live. The contains opinion of Pediatrician being member of Board who examined the victim, that if delivery is performed at this gestational age then there is a strong possibility of a live birth with prematurity. This baby will require special care and admission in SNCU (Special Newborn Care Unit). There can be a possibility of mental subnormality in future life of this baby. The observations of Neurologist who is also member of Board who examined child is that there is high risk for the patient for induction of labour, in view of premature delivery at 15 years and 6 months of age of mother (patient). High chances of perinatal complications in the new born, may require neonatal intensive care. High possibility of long term neurological complications in the new born which may also lead to long term disability in the newborn. The final opinion states that the risk of termination at this stage is not higher than the risk at the time of full term delivery. Pregnancy can be terminated subject to directions of Court. The pregnant minor and her parents have expressed desire to terminate the pregnancy and are made aware of the dangers of continuation of pregnancy as well as termination of pregnancy. The report indicate that the pregnancy has advanced to 30 weeks and 1 day well beyond legal limits of termination of pregnancy i.e. 23 weeks.

4. Learned advocate for Petitioner submitted that since the opinion of Medical Board indicate that child would be born alive and pregnancy can be terminated, this Court may give directions allowing termination of the pregnancy of victim. If pregnancy is continued till full term of delivery, the victim child will have to undergo agony. The victim's decision should be taken into consideration. Reliance is placed on the decision of Supreme Court in the case of XYZ Vs. The State of Gujarat and others (2023-LiveLaw (SC)-680) and the observations in paragraphs 17 and 21 of said decision.

5. Learned AGP submitted that pregnancy of victim is at advance stage. The victim has completed 30 weeks of pregnancy. The opinion of Medical Boards indicate that there would be risk to the child. Pregnancy should not be terminated at advance stage. The Medical opinion indicate that child would born alive. There is no point in taking risk be premature termination. After delivery measures can be taken for adoption of the child by consent of parties.

6. We have noticed that pregnancy is at advance stage, as the victim has completed 30 weeks of pregnancy. The report indicate that risk of termination at this stage is not higher than the risk at the time of full term delivery. However, opinion of Neurologist indicate that if the surgery is performed at this stage, there is high risk for the patient for induction of labour, in view of premature delivery at 15 years and 6 months age of mother (patient). High chances of perinatal complications in the new born, may require neonatal intensive care. High possibility of long term neurological complications in the new born which may also lead to long term

disability in the newborn. Similarly the opinion of Gynecologist states that patient is 15 years old, primigravida with 30 weeks 1 days pregnancy with anaemia, risk of termination of pregnancy is not higher than the risk at the time of full term delivery and after termination baby can be live. This risk explained to relatives. They should take care of live baby after birth.

7. Considering aforesaid circumstances, we do not find it fit to terminate pregnancy of victim. After full time delivery, adequate measures can be adopted with the consent of victim and her parents for taking care of baby.

8. In the event of any difficulty post delivery, the Petitioner is at liberty to move this Court.

9. The writ petition is disposed off.

(N.R.BORKAR, J.)

(PRAKASH D. NAIK, J.)

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