



W.P.(MD) No.24489 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD) No.24489 2024

P.Rajangam

...Petitioner

-VS-

1.The Dean,
Government Rajaji Hospital,
Madurai District, Madurai.

2.The Inspector of Police,
Vadipatty Police Station,
Vadipatty,
Madurai District.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus, directing the first respondent to terminate the pregnancy of petitioner's minor daughter, XXX aged about 17 years, by considering the petitioner's representation dated 15.10.2024.

For Petitioner	: Mr.C.M.Mari Chelliah Prabhu
For R1	: Mr.D.Gandhiraj Special Government Pleader
For R2	: Mr.M.Vaikkam Karunanithi Government Advocate (Crl.side)



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ORDER

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The petitioner has filed this writ petition to direct the first respondent to terminate the pregnancy of petitioner's minor daughter, aged about 17 years, by considering the petitioner's representation dated 15.10.2024.

2.Mr.D.Gandhiraj, learned Special Government Pleader, takes notice for the first respondent and Mr.M.Vaikkam Karunaithi, learned Government Advocate (Crl.side), takes notice for the second respondent. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3.It is the case of the writ petitioner that on 13.11.2023, the minor daughter of the petitioner, who was aged about 17 years, was kidnapped by one Manivannan, who is aged about 34 years and a married man. In this regard, a criminal case was also registered in Crime No.418 of 2023. Subsequently, the petitioner filed a Habeas Corpus Petition before this Court in H.C.P.(MD)No.1497 of 2023. Pursuant to the same, the minor daughter was produced before this Court from the illegal custody on



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14.10.2024. Thereafter only, it came to know that the minor daughter of the petitioner is pregnant. As on today, the daughter of the petitioner is 24 weeks and 4 days pregnant.

4. According to the petitioner, the life of the minor daughter would become risk with imminent possibility of endangering to her life. Further, the minor daughter was caused with unwanted pregnancy, which will cause grave injury to her mental health also. Hence, the petitioner seeks a direction to terminate the pregnancy.

5. The learned Special Government Pleader for the first respondent would submit that as per the Termination of Pregnancy Act, only 24 weeks pregnancy can alone be terminated. However, in the event of any risk, the Medical Board has to take a call on it.

6. The Hon'ble Supreme Court in the case of *A vs. Union of India reported in (2018) 4 SCC 75* permitted termination in a case where the gestational age was 25-26 weeks. In *Murugan Nayakkar vs. Union of India reported in 2017 SCC Online SC 1092*, the Hon'ble Supreme Court once again allowed termination of pregnancy in the case of 13 year



old child and in ***Sarmishtha Chakraborty vs. Union of India reported in (2018) 13 SCC 339*** permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendations of the medical board.

7. Similarly, in the case of ***Meera Santosh Pal vs. Union of India reported in 2017 3 SCC 462*** permission for medical termination of pregnancy was granted when the pregnancy crossed 24 weeks, based on the medical reports pointing out the risk involved in the continuation of pregnancy. The Kerala High Court in the case of ***Neethu Narendran vs. State of Kerala reported in 2020 (3) KHC 157*** has also permitted termination of pregnancy when the gestation age crossed 23 weeks.

8. The aforesaid decisions were followed by a learned Single Judge of this Court who permitted the medical termination of pregnancy of a rape victim whose gestation age was between 10 to 11 weeks in the case of ***Mahalakshmi vs. District Collector and others*** in his decision dated 19.01.2021 in W.P.(MD).No.659 of 2021. The above decisions were followed by this court in a case of ***S.Manjula Vs. The Principal Secretary to the State Department of Health and Family Welfare and***



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others in W.P.No.25036 of 2021 dated 19.11.2021 and in the case in **K.Vijayakumar Vs. State of Tamilnadu Rep. by the Inspector of Police and another** in W.P.No.18043 of 2022, dated 15.07.2022.

9.The Hon'ble Apex Court in the case of **X vs. Principal Secretary and another [2023 (1) CTC 473]**, has held as follows:

“In determining whether the continuation of the pregnancy would involve grave danger to the pregnant woman's physical or mental health, her actual or reasonably foreseeable environment may be taken into account. 13 We are of the opinion that significant reliance ought to be placed on each woman's own estimation of whether she is in a position to continue and carry to term her pregnancy.”

10.It is stated by the learned counsel for the petitioner that the now the age of the fetus is 24 weeks and 4 days as on today. Considering the peculiar facts and circumstances of the case that the pregnancy of the petitioner's daughter is a result of crime against the minor girl, the petitioner shall produce his minor daughter before the first respondent tomorrow (i.e., 17.10.2024).



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11.The medical board shall decide whether the continuation of pregnancy would involve grave danger to the pregnant woman's physical or mental health or her actual or reasonably foreseeable environment may be taken into account. Taking note of the mental health of the victim, if the Medical Board concludes that the fetus can be aborted without endanger to the life of the petitioner's daughter, a team of doctors, namely gynecologists, pediatrician and other members shall carry out the termination with the consent of the victim.

12.With the above direction, this writ petition is allowed. No costs.

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Index : Yes / No

Internet : Yes / No

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Note: Issue order copy on 16.10.2024



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To
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Government Rajaji Hospital,
Madurai District, Madurai.
- 2.The Inspector of Police,
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N.SATHISH KUMAR, J.

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