

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No.6794 of 2024 (O&M)  
Date of decision: 22.03.2024

XXX

....Petitioner

Versus

State of Punjab and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

**Present:** Ms. Ritu Punj, Advocate  
with Ms. Rekha Luhach, Advocate  
and Ms. Suraksha Masih, Advocate  
for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab  
assisted by ASI Surjit Singh, P.S. Sahnewal, Ludhiana.

**NAMIT KUMAR J. (Oral)**

1. Prayer in the present writ petition is for seeking termination of pregnancy of minor victim who has become pregnant on account of offence of rape committed upon her by her neighbour and a case bearing FIR No.59 dated 16.03.2024, under Sections 4 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, and under Section 376 of the Indian Penal Code, 1860, has been registered at Police Station Sahnewal, District Police Commissionerate, Ludhiana.
2. Learned counsel appearing for the petitioner contends that the date of birth of the minor petitioner (victim) is 01.01.2011 and she is aged about 13 years and is a student of 6<sup>th</sup> class and is continuing her studies in Government High School, Lohara, District Ludhiana. The

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petitioner had a friend, aged about 16 years, in her neighbourhood, and she occasionally went to her friend's home. Few months ago, when the petitioner went to her friend's home, her friend's brother offered a glass of juice to her and after consuming the same, she became unconscious and thereafter, two brothers of her friend namely Mahinder Singh and Shiv Kumar, committed rape upon her and made obscene videos. When the petitioner gained consciousness, she was threatened by both the accused persons. The petitioner got very frightened but still, both the aforesaid accused persons along with one Gaurav, who runs a mobile shop at Gyan Vidyalaya, Peepal Chowk, near Rudra Enclave, Ludhiana, and one more unknown person committed rape upon the petitioner many times and she was being threatened by the accused persons not to disclose anything with regard to the alleged act. Later on, when the petitioner became pregnant, she disclosed everything about the alleged incident to her mother. Thereafter, the medical examination of the minor petitioner was conducted whereupon she was found pregnant for 21 weeks and 02 days. In this regard, an FIR No.0059 dated 16.03.2024 under Sections 4 and 5 of the POCSO Act and Section 376 IPC was registered at Police Station Sahnewal, District Police Commissionerate, Ludhiana.

3. Learned counsel for the petitioner submits that the petitioner is a minor and continuation of her pregnancy will cause a great physical and psychological trauma and she further contends that the petitioner herself is dependent upon her parents and, therefore, she is not in a position to take care of the child in case she is supposed to

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deliver a child. She further submits that since the pregnancy is more than 21 weeks old, the petitioner is bound to approach this Court for seeking termination of her pregnancy in accordance with the statutory mandate.

4. Vide order dated 19.03.2024, the minor petitioner (victim) was directed to appear before Civil Surgeon/Chief Medical Officer, Civil Hospital, Ludhiana on or before 21.03.2024, for her medical examination and other necessary tests. A report from the Board of Doctors was also called for in this regard.

5. Pursuant to the said order, the minor petitioner appeared before the Medical Board of the Doctors at Ludhiana and subjected herself to medical examination. A report of Board of Doctors, Ludhiana, has been handed over to the Court today and the same is taken on record as Mark 'A'. The relevant extract of the said report, is as under:-

*“On 20.03.2024*

*A Board of Doctors comprising of Dr. Sachayta (Gynae), Dr. Lakhwinder Kaur (Gynae), Dr. Harsimran (Psychiatrist) is constituted by SMO I/C MHC, Ludhiana, to get opinion regarding termination of pregnancy of prosecutrix 13 years old d/o Ajay Parsad.*

*Ultrasound dated 20.03.2024 vide No.SAN/89/CH/LDH done at Civil Hospital, Ludhiana, shows single life Intra-Uterine pregnancy of 21 weeks + 6 days. Her LMP is 21.10.2023. The Board is of the opinion that her pregnancy can be terminated under MTP Act, 1971 with*

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*Amendment, 2021 after seeking psychological advice by the Psychiatrist who is one of the Board members.*

*Sd/-  
Lakhwinder Kuar*

*Sd/-  
Sachayta*

*Dr. Lakhwinder Kaur  
M.B.B.S., DGO  
Consultant Obst. & Gynae  
M.O., Civil Hospital, Ludhiana*

*Dr. Sachayta  
M.D. (Obs. & Gynae)  
L.M. Civil Hospital, Ludhiana  
PMC No.37294”*

6. Learned counsel for the petitioner refers to the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 wherein pregnancies are permitted to be terminated by a Registered Medical Practitioner. Section 3 of the Medical Termination of Pregnancy Act, 1971 is extracted hereinafter below:-

*“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. 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 twelve weeks, if such medical practitioner is,  
or*

*(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if*

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*not less than two registered medical practitioners are, of 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 such physical or mental abnormalities as to be seriously handicapped.*

*Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.*

*Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.*

*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 to the pregnant woman's actual or reasonable 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.”*

7. Learned counsel for the petitioner further submits that the

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continuation of the said pregnancy is likely to cause great pain to the petitioner who is a minor, and to her it will be a persistent reminder of the atrocity to which she had been subjected to. Furthermore, taking into consideration her tender age, it would also cause a great mental harm to the well-being of the child. The anguish caused by the pregnancy is itself sufficient to constitute grave injury to the mental health of the petitioner and that it would rather be in the betterment and best interest of the unborn child as well as the petitioner that the pregnancy is permitted to be terminated. She further contends that the minor petitioner has held detailed deliberation with her parents and they have voluntarily come to the conclusion that it would be in the larger interest of the minor petitioner that the pregnancy is terminated in accordance with the law.

8. Learned counsel for the State, on instructions from ASI Surjit Singh, P.S. Sahnewal, Ludhiana, has no objection to the submissions made by learned counsel for the petitioner.

9. I have heard the learned counsel appearing on behalf of the respective parties.

10. The Hon'ble Supreme Court in the matter of ***“X versus Union of India”***, (2020) 19 SCC 806, has while considering the case regarding medical termination of pregnancy of a 13 year old rape victim, held that:-

*“3. Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of the pregnancy should be allowed”.*

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11. It is not in dispute that the victim is a minor even as on date and is dependent on her family. She is yet to complete her education and pursue her goals in life. It can also not be lost sight of the fact that the pregnancy is an outcome of violation of the minor. It is a testimony to her bruised body and soul. The child, if born, is not a reminder of good memories, but shall be a reminder of trauma and agony she had to undergo. As an unwanted child, the member is also likely to either live a tormenting life filled up with taunts to his/her origin or only to be given away. In either of the said situation, the mother as well as the child shall suffer social stigma and incarceration for rest of their lives. The same is not in the best interest of either of the mother; and her family already having expressed their unwillingness to bring up the child, it may not even be advancing the cause of the unborn, who will grapple to come to terms with life and be subjected to maltreatment for no fault. Such decisions are tough, however, life is not just about being able to breathe – rather it is about being able to live with dignity. Where the denial of dignity and social as well as family acceptance or approval is a writing on the wall, it compounds agony of the child and leads to greater injustice. Balance thus needs to be drawn to examine the overall wellbeing. Whether to shape the trauma of a victim or to prolong it by delivery of the child, who is to be only victimized. The choices thus reduce and it seems more prudent to allow the termination of pregnancy.
12. There is also no reason for this Court to presume that the opinion given by the Medical Board concerned is not in good faith and as to how the continuation of this pregnancy would be in larger interest

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of the mother.

13. At this stage, learned counsel for the petitioner contends that Postgraduate Institute of Medical Education and Research (PGIMER), Sector 12, Chandigarh, is a medical institute with higher centrally equipped functional ICU with other advance facilities and that the said Medical Institute may be directed to conduct the medical termination of the pregnancy in accordance with the law, keeping in view the tender age of the petitioner.

14. Resultantly, the Director of Postgraduate Institute of Medical Education and Research (PGIMER), Sector 12, Chandigarh, is directed to take all appropriate and necessary steps required to carry out the medical termination of the pregnancy of the minor petitioner upon satisfaction of all such necessary conditions as prescribed in law.

15. The minor petitioner (victim), alongwith her parents, shall approach the Authorities of the said Institute on 26.03.2024 (Tuesday), whereupon expeditious steps shall be taken for termination of the pregnancy of the minor petitioner, in accordance with law.

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

17. Consequently, the present petition is allowed in the above terms.

(NAMIT KUMAR)  
JUDGE

22.03.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No