



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

286

CWP-17477-2024
Date of Decision: 06.08.2024

ISHA

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Nirmaljeet Singh Sidhu, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. K.P.S. Virk, Advocate
for respondent No.2.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner has approached this Court for seeking issuance of directions to the respondents to terminate her pregnancy in view of the provisions of Medical Termination of Pregnancy Act, 1971 (for short 'the MTP Act').

Learned counsel for the petitioner contends that that one Sukhdeep Singh son of Sukhvir Singh resident of Bajakhana, District Faridkot, Punjab had developed physical relations with the petitioner on the pretext of solemnizing marriage with her. Eventually, the petitioner came to know that she has conceived a pregnancy due to the abovesaid relations. She informed Sukhdeep Singh about the same and requested him to marry her. But instead of performing marriage with her, said Sukhdeep Singh assaulted the petitioner by



inflicting bodily injuries and flatly refused to marry her. The petitioner then approached the police authorities and got registered an FIR No.67 dated 15.05.2024 under Sections 376 and 323 of the IPC at Police Station Civil Lines Bathinda against Sukhdeep Singh. He further submits that the petitioner is not ready and willing to continue with the said unwanted pregnancy and wants to abort the same. He further submits that the MTP Act provides the provisions for termination of pregnancy by a registered medical practitioner. He further submits that the petitioner was allured by the said Sukhdeep Singh for performing marriage with her and under the garb of such false promise, developed physical relations with the petitioner, as a result of which, the petitioner got pregnant. Hence, the present petition.

The petition came up for hearing on 29.07.2024, when the following order was passed:

“The petitioner has approached this Court for seeking directions to terminate the pregnancy as per the provisions of the Medical Termination of Pregnancy Act, 1971 stating that the conception is on account of an offence committed against her for which FIR No. 67 dated 15.05.2024 has been registered under Sections 376/323 of the Indian Penal Code, 1860 at Police Station, Civil Lines, Bathinda.

It is noticed that the said FIR was registered on 15.05.2024 and the petitioner had got herself examined on 24.05.2024 as per which the gestation period of the pregnancy was more than 06 weeks. The petitioner has approached this Court now on 29.07.2024 after waiting for more than 8½ weeks.

Notice of motion.



Mr. Aditya Sharda, DAG, Punjab appears and accepts notice on behalf of respondents No.1, 3 and 4.

Mr. Kanwalpreet Singh Virk, Advocate appears and accepts notice on behalf of respondent No.2 and files his Power of Attorney in the Court today which is taken on record.

Taking into consideration the facts of the case and urgency involved, it is directed that the petitioner may appear before the Civil Surgeon, Civil Hospital, Bathinda, District Bathinda who shall constitute a Medical Board for the medical examination of the petitioner. A report with respect to the foetus as well as the recommendations in relation to termination of pregnancy, if any, shall also be submitted before this Court by the Board.

Additionally, the respondent-State of Punjab is also directed to submit a report from the Social Welfare Department, Punjab with respect to the social and the psychological assessment of the petitioner.

*Let the petitioner appear before the Civil Surgeon on or before **01.08.2024**.*

*The report may be submitted on or before **05.08.2024**.*

A copy of this order be given to the learned Counsel appearing on behalf of the respective parties under the signature of Bench Secretary of this Court.

5. Pursuant to the aforesaid order, a Medical Board was constituted by the Civil Surgeon, Bathinda and after examination of the petitioner-victim, the Medical Board, comprising of one member i.e. Senior Medical Officer, I/c Women & Children Hospital, Bathinda has recommended that the petitioner-victim can undergo termination of pregnancy as per the MTP Act and the rules



contained thereunder. The relevant part of the report received from the Medical Board constituted by the Civil Surgeon, Bathinda is extracted as under:

“As per letter No.2245-46 dated 31/07/2024 Civil Surgeon office Bathidna and order of Honorable’ Punjab and Haryana High Court Civil Petition No.17477-2024 dated 29.07.2024, Victim Isha aged 22 yrs, female whose LMP is 23/03/2024, She is giving history of irregular menstrual cycle. Her urinary pregnancy test was positive on 15/05/2024. According to last menstrual period, Period of gestation is 18 weeks 2 days.

On examination, She is conscious, Co-operative, well oriented in time, place and person.

Pulse - 82 per min.

BP - 106/72

Per Abdomen – Uterus is 16 – 18 weeks palpable.

Ultrasonography is done on 31/07/2024. According to ultrasonography, there is single live intrauterine foetus of gestational age 16 weeks 5 days.

So according to MTP Act, the termination of pregnancy is recommended. The original report of ultrasonography is hereby attached with.

*Senior Medical Officer
I/c Women & Children Hospital
Bathinda”*

The said report has been filed today and has been perused by this Court.

Learned counsel for the petitioner refers to 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 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 a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1 - For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.



Explanation 2 - For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2-A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2-B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2-C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2-D) The Medical Board shall consist of the following, namely—

- (a) a Gynaecologist;
- (b) a Paediatrician;
- (c) a Radiologist or Sonologist; and
- (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.]

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably 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.”*

Learned counsel for the petitioner further refers to the provisions Section 3-B (a) and (c) of The Medical Termination of Pregnancy Rules, 2003, which read thus:

“3-B Women eligible for termination of pregnancy up to twenty-four weeks –

The following categories of women shall be considered eligible for termination of pregnancy under Clause (b) of Sub-Section (2) Section 3 of the Act, for a period of upto twenty four weeks, namely-

- (a) Survivors of sexual assault or rape or incest;***
- (b) XXXXXXXXXXXXX***
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);***
- (d) XXXXXXXXXXXXX***
- (e) XXXXXXXXXXXXX***
- (f) XXXXXXXXXXXXX***
- (g) XXXXXXXXXXXXX”***

Learned counsel for the petitioner contends that the continuation of the said pregnancy is likely to cause great pain to the petitioner, and to her it will be a persistent reminder of the atrocity to which she had been subjected to. Furthermore, taking into consideration physical and mental health of the



petitioner, it would also cause a great mental harm to the wellbeing 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 petitioner that the pregnancy is permitted to be terminated.

On the other hand, learned counsel for the respondents did not raise any serious objection and submitted that they would abide by the directions as per the order passed by this Court.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

The Hon'ble Supreme Court of India has already held in the matter of ***“Suchita Srivastava & Another versus Chandigarh Administration”*** reported as 2009 (4) RCR (Civil) 258 that a pregnancy can be terminated where such pregnancy has been conceived as a result of rape and the same has been causing a grave injury to the mental health of the victim.

It would also be pertinent to mention that the Hon'ble Supreme Court has held in the judgment of ***“Sarmistha Chakraborty & Another versus Union of India Secretary & Others”*** decided on 03.07.2017 that “the right of a woman to have a reproductive choice is an insegregable part of her personal liberty, as envisaged under Article 21 of the Constitution of India. She has a sacrosanct right to have her bodily integrity”.



Furthermore, in the matter of “**Meera Santosh Pal and Others Versus Union of India and others**” reported as (2017) 3 SCC 462, it has been held as under:

“Upon evaluation of Petitioner No.1, the aforesaid Medical Board has concluded that her current pregnancy is of about 24 weeks. The condition of the foetus is not compatible with extra-uterine life. In other words, the foetus would not be able to survive outside the uterus. Importantly, it is reported that the continuation of pregnancy can gravely endanger the physical and mental health of petitioner No.1 and the risk of her termination of pregnancy is within acceptable limits with institutional back up.”

A further reliance was made on a judgment dated 07.12.2021 passed in Civil Writ Petition No. 24685 of 2021 titled as “**Sanjiv Kumar versus State of Punjab and others**” wherein this Court directed the PGIMER, Chandigarh to carry out medical termination of the pregnancy of a rape victim.

Taking into consideration, the background under which the victim has conceived the pregnancy and duly noticed in the order dated 29.07.2024 coupled with the report received from the Medical Board recommending the medical termination of the pregnancy conceived by the petitioner-victim and the fact that it is not likely to endanger the life of the victim herself and taking into consideration that the victim herself will have to undergo psychological distress on account of the current situation apart from the psychological trauma of carrying a pregnancy as a result of the assault on her bodily integrity, the present petition is allowed.

It is taken into consideration that the victim is ready and willing to appear before respondent No.4-Civil Surgeon, Civil Hospital, Bathinda on or



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before 13.08.2024 and is also ready and willing to fulfill all the necessary formalities contemplated in the statute for undergoing the procedure under the MTP Act.

In view of the above, the petitioner is permitted to appear before respondent No.4 - Civil Surgeon, Civil Hospital, Bathinda on or before 13.08.2024 and upon completion of all the necessary formalities, the said respondent shall undertake the necessary medical procedures in accordance with law.

The petitioner would be at liberty to espouse her financial status before the authorities concerned and would be entitled to the benefit under the prevalent scheme(s) in accordance with the rules.

The petition is accordingly allowed.

AUGUST 06, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No