



CWP-4147-2025

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(132)

CWP-4147-2025

Date of Decision : 19.02.2025

S***** through her father Rakesh

...Petitioner

Versus

State of U.T. Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms./Mrs. Ramandeep Kaur, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

Mr. Avinit Avasthi, Advocate
for respondent No.3-PGIMER, Chandigarh.

KULDEEP TIWARI, J.(ORAL)

1. The petitioner/a minor (aged 17 years on Aadhaar Card), claims herself to be 16 weeks' pregnant as on date, on account of perpetration of sexual assault upon her, has instituted the instant writ petition, through her father, by enclosing therein prayer for issuance of mandamus upon the respondents to provide her adequate medical help for medical termination of her pregnancy. Further, prayer is made for preservation of DNA evidence of the foetus of the petitioner, for the purpose of identification of the perpetrators, and for future investigation.

FACTS OF THE CASE

2. The averments made in the instant writ petition are that, consequent upon the petitioner becoming missing, an FIR No.397 dated 07.09.2024, under Sections 137(2) and 96 of the B.N.S., 2023, was registered



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by the petitioner's father at P.S. Zirakpur, District S.A.S. Nagar, against some unknown kidnapper. Post recovery of the petitioner, when her ultrasound test was done, it was found that the petitioner is pregnant as a result of sexual assault. While disclosing the above facts, prayer is made that, the petitioner does not want to continue with her unwanted pregnancy as it would cause grave injury to her physical and mental health, therefore, permission of this Court was sought to medically terminate her unwanted pregnancy.

PROCEEDINGS BEFORE THIS COURT AND REPORT OF THE BOARD OF DOCTORS

3. Taking into account the facts and circumstances, as narrated in the instant petition, this Court while drawing an order dated 14.02.2025, had directed the petitioner to appear before the respondent No.3/Director, PGIMER., Sector 12, Chandigarh, on dated 17.02.2025. Further, a mandamus was also passed upon the latter, to constitute a Board of Doctors, as per the provisions of the Medical Termination of Pregnancy Act, 1971 (for short 'the Act of 1971'), to find out the age of the foetus, as well as the health condition of mother and the foetus, and thereupon, shall submit a status report in this regard. Simultaneously, a mandamus was also passed upon the S.H.O. of the jurisdictional police station concerned, to extend every possible help to the petitioner for the above purpose, and thereupon, to file his personal affidavit before this Court, disclosing therein, the status of the FIR (supra).

4. In deference to the directions (supra), the petitioner along with her parents i.e. (father and the mother), was produced before the Doctor, by the SHO concerned, on dated 17.02.2025. The petitioner was medically examined by the Consultant Doctors at OPD Basis, and on that day, some investigation was also carried out by the doctors, and she was finally advised

to appear before the medical board on dated 18.02.2025, at 9.00 a.m., for



further investigations, and to take further action in accordance with the Act of 1971.

5. The report of the Medical Board dated 18.02.2025, has been furnished today in the Court, by learned counsel for the respondent No.3. The same is taken on record as 'Mark-A'.

6. The perusal of the report (supra), reflects that the petitioner, who is aged 17 years, is Primigravida. As per the ultrasound done on 17.02.2025, a single live intra-uterine foetus with AUA 16 weeks 06 days and EFW 161+-24 grams.

7. As far as, the mental status of the petitioner is concerned, it was reported that the petitioner was under stress, on account of pregnancy, and she wants to discontinue the current pregnancy and does not want to continue with it. No e/o active psychopathology elicitable.

8. The Medical Board, finally allowed the termination of pregnancy, and advised the petitioner that the termination procedure is to be carried out in the PGIMER, with all safety precautions, along with appropriate counseling within 05 days from the request sent to the Medical Board. The relevant extract of the report is reproduced hereunder :-

"Age: 17 years (based on Adhaar card number-5844 0913 7831. DOB-01/01/2008)

2. CR Number: 202501549374

The findings of the board are as following :

1. The patient is Primigravida. As per ultrasound done on 17.02.2025, there av a single live intra-uterine foetus with AUA 16 weeks 06 day and EFW 161+-24 gms.

2. History reviewed and mental status examination done Patient is stressed since the time she became aware of the pregnancy. She wants to discontinue the current pregnancy and does not want to continue with it. No e/o active



psychopathology elicitable.

3. Patient has been examined Patient is clinically stable to undergo MIP Her BF is 100/60 mm hig. Pulse 88 per min. Haemoglobin 10.6 gm/dl (dated: 18-02-2025) and blood group is B positive.

Opinion by Medical Board for termination of pregnancy:

a) Termination of pregnancy is allowed

b) The board advises that the termination procedure is to be carried out in PGIMER with all safety precautions and along with appropriate counselling within 5 days from the request sent to Medical Board.

Justification for the decision:

The medical board recommends MTP at this stage.

*2 Physical fitness of the woman for the termination of pregnancy. **Yes - Physically fit.***

9. Status report dated 17.02.2025, by way of affidavit of Mr. Jaskanwal Singh, Inspector/SHO, Police Station Zirakpur, furnished by the learned State counsel today, in the Court. The same is taken on record. So far as the status of the FIR is concerned, it is reflected from the status report (supra), that one accused, namely, Jatinder Kumar was arrested in this case, on dated 28.12.2024, and the victim was also recovered. The investigation of the FIR (supra), is still underway.

10. Before this Court proceeds to gauge the merits/demerits of the instant writ petition and consequently evince any opinion thereon, it is deemed apt to initially capture a glimpse of some significant legal provisions and judicial precedents germane to the disposal of the instant writ petition.

ANALYSIS OF SIGNIFICANT LEGAL PROVISIONS AND JUDICIAL PRECEDENTS GERMANE TO THE DISPOSAL OF THE INSTANT WRIT PETITION

11. The first provision, which is of utmost significance and which is reproduced hereinafter, is enclosed in Section 3 of the Act of 1971 inasmuch



as there becomes prescribed the manner in which registered medical practitioners may terminate pregnancies.

“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.

(2A) 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.

(2B) 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.

(2C) 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.

(2D) 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 a pregnancy would involve such risk of injury to the health as is mentioned in subsection (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.”

12. Another important provision is encapsulated in Rule 3 (B) of The Medical Termination of Pregnancy Rules, 2003 (hereinafter referred to the as ‘Rules of 2003’). This Rule prescribes the categories of women, who shall be considered eligible for termination of pregnancy for a period of upto twenty-four weeks. Rule 3 (B) is reproduced hereunder:-

“3B. 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 up to twenty-four weeks, namely:—

(a) survivors of sexual assault or rape or incest;

(b) minors;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];

(e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”

13. Taking into account the age of the foetus, which is 16 weeks 06 days, and considering the fact that the pregnancy is the result of sexual assault,



this Court can safely conclude that the case of the petitioner does cover under Section 3 (2) (b) (i) of the Act of 1971, and therefore, this Court can grant the asked for relief.

14. Moreover, in ***“K.S. Puttaswamy Vs. Union of India”, (2017) 10 SCC 1***, a nine Judge Bench of the Hon’ble Supreme Court has held that the right to privacy enables individuals to retain and exercise autonomy over the body and mind. This issue came to be considered in ***“X Vs. Principal Secretary, Health and Family Welfare Department and Anr.” (supra)*** also, whereupon, it has been held as under:-

“100. In K S Puttaswamy v. Union of India, a nine-judge bench of this Court recognized the right to privacy as a constitutionally protected right under Article 21 of the Constitution. In Puttaswamy (supra), this Court held that the right to privacy enables individuals to retain and exercise autonomy over the body and mind. The autonomy of the individual was defined as “the ability to make decision on vital matters of concern to life.” The judgement delivered on behalf of four judges described the right to privacy in the following terms:

“297. ... Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable



elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt.” (emphasis supplied)

101. Importantly, Puttaswamy (supra) also deals with facets of reproductive autonomy. Chelameshwar, J. held that a “woman’s freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy.”⁹³ This Court recognized the right to bodily integrity as an important facet of the right to privacy. Puttaswamy (supra) considered Suchita Srivastava v. Chandigarh Administration to reiterate that the statutory right of a woman to undergo termination of pregnancy under the MTP Act is relatable to the constitutional right to make reproductive choices under Article 21 of the Constitution.

102. In Suchita Srivastava (supra) this Court explicitly recognized the concept of reproductive autonomy. In this case, the victim, an orphaned woman of around 19 years, with mental retardation, became pregnant as a result of a rape that took place while she was an inmate at a government-run welfare institution. After the discovery of her pregnancy, the Chandigarh Administration approached the High Court of Punjab and Haryana seeking approval for the termination of her pregnancy. The High Court constituted an expert body to conduct an enquiry into the facts. The expert body recorded that the victim had expressed her willingness to bear the child and accordingly recommended the continuation of the pregnancy. However, the High Court directed the termination of the pregnancy on the ground that the victim was mentally incapable of making an informed decision on



her own.

103. A three-judge Bench of this Court disagreed with the High Court's decision. In a judgment authored by K G Balakrishnan, C.J., this Court emphasized that the consent of the pregnant woman is an essential requirement to proceed with the termination of a pregnancy under the MTP Act. It was held that the state administration cannot claim guardianship of the woman as she was a major. It was further held that the woman only had "mild mental retardation" and was therefore competent to give her consent in terms of Section 3(4)(a) of the MTP Act. This Court concluded that the state must respect the reproductive rights of women with "mental retardation" with regard to decisions about terminating their pregnancy. In the process, this Court recognized that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution:

"22. 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. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to



give birth and to subsequently raise children. However, in the case of pregnant women there is also a “compelling State interest” in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.”

104. Suchita Srivastava (supra) rightly recognised that the right of women to make reproductive choices is a dimension of personal liberty under Article 21. It held that reproductive rights include a woman’s entitlement to carry the pregnancy to full term, give birth, and raise children. More importantly, it also recognised that the right to reproductive choice also includes the right not to procreate. In doing so, it situated the reproductive rights of women within the core of constitutional rights.

105. Decisional autonomy is an integral part of the right to privacy. Decisional autonomy is the ability to make decisions in respect of intimate relations. In Puttaswamy (supra) this Court held that personal aspects of life such as family, marriage, procreation, and sexual orientation are all intrinsic to the dignity of the individual. The right to privacy safeguards and respects the decisional autonomy of the individual to exercise intimate personal choices and control over the vital aspects of their body and life. In Common Cause v. Union of India, this Court observed that right to privacy protects decisional autonomy in matters related to bodily integrity:

“441. The right to privacy resides in the right to liberty and in the respect of autonomy. The right to privacy protects autonomy in making decisions related to the intimate domain of death as well as



bodily integrity. Few moments could be of as much importance as the intimate and private decisions that we are faced regarding death. Continuing treatment against the wishes of a patient is not only a violation of the principle of informed consent, but also of bodily privacy and bodily integrity that have been recognised as a facet of privacy by this Court.”

106. The right to decisional autonomy also means that women may choose the course of their lives. Besides physical consequences, unwanted pregnancies which women are forced to carry to term may have cascading effects for the rest of her life by interrupting her education, her career, or affecting her mental well- being.”

15. In “***Amandeep Kaur Vs. The Postgraduate Institute of Medical Education and Research, Chandigarh***”, CWP-474-2024, Decided on: **20.01.2024**, the Co-ordinate Bench of this Court has held that “Forced into an unwanted pregnancy, a woman is likely to experience significant physical and emotional challenges. Dealing with the aftermath of such a pregnancy, even after childbirth, places an extra burden on the petitioner, affecting her ability to pursue other opportunities in life, such as employment and contributing to her family's income.”

FINAL ORDER

16. In view of the hereinabove discussed legal propositions and facts and circumstances of the instant case, this Court deems it appropriate to allow the instant petition. Therefore, the petitioner, who has a pregnancy length of 16 weeks 06 days, as on today, is eligible for medical termination of her unwanted pregnancy. Consequently, the instant petition is **allowed**.

17. The petitioner is directed to approach the respondent No.3 Director, PGIMER., Sector 12, Chandigarh, within two days from today, and

thereupon, the respondent No.3, shall in accordance with the Act and Rules of Medical Termination Pregnancy Act, 1971, take expeditious measures for medically terminating the pregnancy of the petitioner.

18. Copy of this order be supplied to the learned counsel for the parties concerned, under the signatures of Bench Secretary of this Court, for information and compliance.

(KULDEEP TIWARI)
JUDGE

February 19, 2025
Manpreet

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