

THE HIGH COURT OF MADHYA PRADESH 1
WP 5723 of 2021
Kunwarlal Yadav vs. State of MP and Ors.

Gwalior, Dated :19/03/2021

Shri Mehmood Khan, Counsel for the petitioner.

Shri Deepak Khot, Government Advocate for the respondents/ State.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

"(a) the respondents may be directed to terminate the pregnancy of the victim so the life of the victim may be saved.;

(b) any other order which this Hon'ble court deems fit in favour of the petitioner."

It is the case of the petitioner that the daughter of the petitioner is minor, aged about 16 years and she was subjected to rape as a result of which, Crime No.25/2021 has been registered at Police Station Civil Lines, Datia for offence under Sections 363, 366-A, 376, 376(2)(n), 343, 120-B of IPC and under Section 5 (L)/6 of Protection of Children from Sexual Offences Act [in short "POCSO Act").

This Court, by order dated 10/03/2021, had directed the CMHO, Datia to constitute a committee including an Anesthetist and Gynecologist to examine the daughter of the petitioner and to submit a report as to whether medical termination of pregnancy is possible or not. The Counsel for the State was also directed to produce the Case Diary.

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Accordingly, Shri Deepak Khot, has produced the Case Diary as well as the report of Medical Board in a sealed cover. According to the Case Diary, the date of birth of the prosecutrix as per her School Record, is 02/04/2004. Thus, it is clear that the prosecutrix is still minor. According to the prosecution case, the prosecutrix was raped by accused Sonu Parihar as a result of which, she has become pregnant.

The report submitted by the Medical Board in a sealed cover is taken on record which reads as under:-

प्रति,

सिविल सर्जन सह मुख्य अस्पताल अधीक्षक
जिला चिकित्सालय दतिया म.प्र.

विषय :- पत्र क्र./कार्या/1094-95 के संदर्भ में!

सन्दर्भ :- आपका पत्र क्र0/कार्या/2021/1094-95 दतिया दिनांक 15/03/2021

महोदय,

उपरोक्त विषय में लेख है कि आज दिनांक 17/03/2021 को गठित कमेटी के द्वारा पीडिता शिवानी यादव पुत्री श्री कुवरलाल यादव की जाँच की गई जिसकी सोनोग्राफी रिपोर्ट में 14 हफ्ते 2 दिन का गर्भ आया है एवं खून की जाँच कराने पर रिपोर्ट सामान्य आई है। अतः कमेटी के मतानुसार पीडिता का नियम के अनुसार (एम.टी.पी. एक्ट के तहत) सुरक्षित गर्भपात सम्भव है।

संलग्न :-

1. सोनोग्राफी रिपोर्ट
2. एच0आई0बी रिपोर्ट
3. हिमेटोलॉजी (सी0बी0सी0) रिपोर्ट
4. बायोकेमेस्ट्री (आर0एफ0टी एण्ड एल0एफ0टी) रिपोर्ट

डॉ0एच0एम0उज्जैनिया निश्चेतना विशेषज्ञ जिला चिकित्सालय दतिया	डॉ. मधुवाला गुप्ता स्त्री रोग विशेषज्ञ जिला चिकित्सालय दतिया	डॉ0 सुधा शर्मा मेडीकल ऑफीसर जिला चिकित्सालय दतिया
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According to this report, the prosecutrix is carrying the pregnancy of 14 weeks and 2 days and the medical termination of her pregnancy is safe.

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Considered the submissions as well as the report submitted by the Medical Board.

The relevant statutory provisions, i.e. Sections 3 and 5 (1) of the Medical Termination of Pregnancy Act reads as under:-

“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 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 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

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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 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 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 lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in C1. (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

5. Sections 3 and 4 when not to apply.- (1) The provisions of Sec.4 and so much of the provisions of sub-section (2) of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.”

This Court is dealing with the case of a child aged about 16 years, who is carrying a child of a person, against whom the allegations of rape have been made and a criminal case also been registered. Not only this, the child will also have social stigma throughout her life and the girl, who is 16 years of age, has to deliver a child which will certainly result in life threat to the pregnant minor girl.

The Supreme Court in the case of **Murugan Nayakkar Vs.**

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Union of India & Ors. in Writ Petition (Civil) No.749/2017 by
order dated **6/9/2017** has held as under:-

“The petitioner who is a 13 years old girl and a victim of alleged rape and sexual abuse, has preferred this writ petition for termination of her pregnancy. When the matter was listed on 28.8.2017, this Court has directed constitution of a Medical Board at Sir J.J. Group of Hospitals, Mumbai. Be it noted, this Court had also mentioned the composition of the team of doctors. The petitioner has appeared before the Medical Board on 1.9.2017 and the Medical Board that has been constituted by the order of this Court expressed the opinion Signature Not Verified Digitally signed by GULSHANKUMAR that the termination of pregnancy should be carried out. That ARORA Date: 2017.09.06 18:28:22 IST Reason: apart, it has also been opined that termination of pregnancy at this stage or delivery at term will have equal risks to the mother. The Board has also expressed the view that the baby born will be preterm and will have its own complications and would require Neonatal Intensive Care Unit (N.I.C.U.) admission.

We have heard Ms. Sneha Mukherjee, learned counsel appearing for the petitioner, Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

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 pregnancy should be allowed.

In view of the aforesaid premise, we direct the petitioner to remain present at the Sir J.J. Group of Hospitals, Mumbai in the evening of 7.9.2017 so that the termination of pregnancy can be carried out preferably on 8.9.2017. Mr. Nishant R. Katneshwarkar shall apprise the Dean of Sir J.J. Group of Hospitals, Mumbai so that he/she can make necessary arrangements for termination of the pregnancy.

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A copy of the order passed today be handed over to learned counsel for the petitioner and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

The writ petition is accordingly disposed of. There shall be no order as to costs.”

In light of the aforesaid judgment, considering the age of the girl, trauma which she has to suffer and the agony she is going through at present and also keeping in view the report submitted by Medical Board Datia, this Court is of the opinion that the prayer made by the petitioner deserves to be allowed and is accordingly **allowed.**

The respondents are directed to carry out termination of pregnancy of the daughter of the petitioner immediately. The Chief Medical & Health Officer, District Datia is directed to admit the child (prosecutrix) latest by **21st March, 2021** and termination of pregnancy be carried out **within a period of one week** after taking all necessary medical precautions.

It is needless to mention that the Head of the Department of Gynecologist, Head of the Department of Anesthesia and all other Specialists will remain present at the time when termination of pregnancy will be carried out, as the girl is of tender age and as there may be a threat to the life of the girl also. Not only this, after the termination of pregnancy is carried out, the State of Madhya

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Pradesh shall ensure postoperative care of the girl (prosecutrix).

The High Court of Bombay in the case of **Shaikh Ayesha Khatoon Vs. Union of India and Others** reported in **2018 SCC OnLine Bom 11** has held as under :-

"28. It is clarified at this stage that the petitioner has been sensitized by the Committee/Medical Board about the risk factors involved and it would be open for the petitioner to undergo the procedure of medical termination of pregnancy at her own risk and consequences. It is further made clear that the Doctors who have put their opinions on record shall have the immunity in the event of occurrence of any litigation arising out of the instant Petition."

In light of the aforesaid judgment, though this Court has already granted permission to carry out termination of pregnancy, but still it is directed that the Doctors who will be part of the process shall have immunity in the event of occurrence of any litigation arising out of the order passed by this Court. It is needless to mention that in case, the Head of the Gynecologist and Head of the Department of Anesthesia are not present, senior Doctors having experience in the field shall carry out the termination of pregnancy.

It is also directed that after terminating the pregnancy of the daughter of the petitioner, the foetus shall be preserved, so that the DNA can be extracted in order to establish the paternity of the child.

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With the aforesaid, writ petition stands **allowed**.

(G.S. Ahluwalia)
Judge

MKB