

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
ON THE 27th OF MARCH 2023
WRIT PETITION No.6283 of 2023**

Between:-

**MISS X D/O HAKIM SINGH, AGED NOW 18
YEARS, THROUGH HER FATHER HAKIM
SINGH, AGED 36 YEARS AROUND,
OCCUPATION: LABOUR, R/O VILLAGE
GOHINDA, POST PUTTI, DABRA,
GWALIOR (M.P.)**

.....PETITIONER

(NONE FOR THE PETITIONER)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
THE PRINCIPAL SECRETARY,
DEPARTMENT OF HOME, VALLABH
BHAWAN, BHOPAL (M.P.)**
- 2. SUPERINTENDENT OF POLICE, DISTRICT
GWALIOR (M.P.)**
- 3. STATION HOUSE OFFICER, POLICE
STATION PICHHORE, GWALIOR (M.P.)**
- 4. DEAN, DEPARTMENT OF OBSTETRICS &
GYNECOLOGY, JAYA AROGYA HOSPITAL
AND GOVERNMENT MEDICAL COLLEGE,**

GWALIOR (M.P.)

.....RESPONDENTS

***(BY SHRI ANKUR MODY – ADDITIONAL ADVOCATE
GENERAL FOR RESPONDENT/STATE)***

*This petition coming on for admission this day, Hon'ble Shri
Justice Milind Ramesh Phadke passed the following:*

ORDER

Advocates are on strike purportedly in the wake of *Adhisuchna* No.08/2023 of State Bar Council of Madhya Pradesh issued by the Working Secretary Geeta Shukla calling upon the Association of Advocates/Advocates to abstain from work on 27.3.2023.

None for the petitioner.

State by Shri Ankur Mody, Additional Advocate General.

Heard Shri Ankur Mody, learned Additional Advocate General for the respondents/State and perused the record.

1. By way of this writ petition under Article 226 of the Constitution of India, the Petitioner is seeking following reliefs:

- “(i) That, this Hon'ble Court may kindly be pleased to call record of the matter and direction may be given to respondents to abort the foetus scientifically as soon as possible and to conduct DNA test of the foetus for the purpose of evidence and trial.
- (ii) That, any other relief as this Hon'ble Court deems fit may kindly be given to the present petitioner.
- (iii) That, cost may also be awarded.”

2. It is the case of the petitioner that her daughter is aged about 18 years and she went missing from home on 15.9.2022 and, accordingly, a missing person report was lodged vide no.12/2022 at Police Station Pichhore . During investigation on 25.9.2022 she was recovered. Elder daughter of the petitioner in her statement had stated that she is a married lady, aged about 22 years, studying in RAB College, Akbarpur, Gwalior. Her marriage was solemnized with Manish Jatav on 25.4.2002. On 14.9.2022 she came to her maternal house, village Gohinda. On 15.9.2022 at about 10:00 PM when she along with prosecutrix was going to answer the call of nature, that on their way one Pawan Jatav along with Sunny Jatav came on motorcycle and took them forcefully to Dabra Railway Station. They took her and prosecutrix to Ahemdabad. From Ahemdabad Sunny took the prosecutrix to Delhi and Pawan Jatav kept her in Ahemdabad in a rental room for 8-9 days and committed sexual intercourse with her. Thereafter on her request on 25.9.2022 Pawan Jatav brought her to Gwalior Railway Station. From the Railway Station she called her brother and went to his house and thereafter , FIR has been registered at Crime No.186/2022 at Police Station Pichhore under section 366, 376, 376 (2) (n) and 34 of IPC against Sunny Jatav and Pawan Jatav and thereafter the prosecutrix was also recovered on 28.1.2023. The daughter of the petitioner was

sent for medical examination and it was found that she was carrying pregnancy of 15 weeks and 5 days and she being rape victim and subjected to sexual harassment didn't want to keep the child. Therefore, the petitioner who is the father of prosecutrix had sought termination of the pregnancy of her daughter by filing the present petition.

3. This Court vide order dated 21.3.2023 had directed the CMHO, District Hospital Gwalior to produce the record of the Medical Board constituted by respondent no.4/CHMO, District Hospital, Gwalior. Thereafter the case was fixed on 23.3.2023. On 23.3.2023 from perusal of the record it was observed that the prosecutrix is a married girl and from the FIR it appears that she was taken forcibly by one Sunny in whose company she remained for four months and 13 days and thereafter she was recovered, and therefore, looking to the facts and circumstances of the case, this Court deemed it necessary to get comments on the aforesaid aspect from the respondents no.2 and 3 and State was directed to procure those comments and place it on record and thereafter the case was fixed on 27.3.2023.

4. Today, the status report in terms of the order dated 23.3.2023 has been filed by the respondents. According to the status report the prosecutrix was sent for Medical Examination and medical examination report was prepared at the KRH, GRMC, Medical College, Gwalior in which she was found pregnant by the urine test conducted to determine pregnancy

and therefore, she was advised to get the Sonography conducted and as per the Sonography report dated 3.2.2023, she was carrying a foetus of 13 weeks and 4 days (3 months 5 days) and as per the school admission registered and the certificate with respect to age of the prosecutrix the prosecutrix is found to be major. In the report it has further been mentioned that on 24.3.2023 a notice was issued to the prosecutrix for recording her statement, wherein the prosecutrix has stated that she wants to terminate her pregnancy because she got pregnant during the forceful intercourse committed by the accused. The statement of the prosecutrix is reproduced as under:

“मैं उपरोक्त पते पर रहती हूँ कक्षा 8 वीं तक पढ़ी हूँ तथा मेरी उम्र दिनांक 06.09.2004 है मुझे व मेरी बहिन संध्या को दिनांक 15.09.2022 को सनी जाटव व पवन जाटव दोनों लोग मुझे व मेरी बड़ी बहिन संध्या को जबरदस्ती मोटर सायकिल पर बिठाकर ले गये थे उसके बाद हम चार लोग डबरा से ट्रेन से अहमदाबाद पहुच गये थे जहां पर सनी जाटव ने मेरे साथ मेरी बिना इच्छा के शारीरिक संबंध बनाये थे सनी जाटव जब मुझे जबरन घर से ले गया था उस समय में गर्भवती नहीं थी उसके बाद जब सनी जाटव ने मेरे साथ मेरी बिना इच्छा के शारीरिक संबंध बनाये थे इस के बाद हम लोग दिल्ली पहुँच गये थे जहा पर पवन जाटव मेरे बड़ी बहिन संध्या को लेकर चला गया था और सनी जाटव ने मुझे एक दिन दिल्ली में किराये के कमरे में रखा था उसके बाद सनी जाटव मुझे ग्राम डगरवाया अपने मामा के यहा लेकर आ गया था ग्राम डगरवाया में मुझे पता चला था की मैं गर्भवती हो गई हूँ उस समय करीबन दो सबा दो माह गर्भवती थी मैं सनी जाटव से ही गर्भवती हुई थी उसके बाद सनी जाटव मुझे बामोर ले गया था वहा पर किराये से रखा था मैं किस के मकान मे किराये से रही थी मुझे पता नहीं है उसके बाद मेरे अपने घर

वालो से सम्पर्क कर के वहा बुला लिया था उसके बाद मेरे घर वाले आ गये थे और वो लोग मुझे मेरे घर ग्राम गोहिन्दा ले आये थे उसके बाद मै दिनांक 28.01.23 को पिछोर थाने पर गई थी जहा पर पुलिस ने मेरे कथन लिये थे उसके बाद मेरे मेडिकल भी कराया था जब मेरे गर्भवती होने की बात अपने परिवार वालो एवं पिता को बताई थी उसके बाद मेरे अपने पिता से बोला था की मै यही बच्चा नहीं रखना चाहती हूँ यह बच्चा सनी जाटव का है उसके के बाद मेरी सहमती से मेरे पिता हॉकिम जाटव ने उच्च न्यायालय खण्डपीठ ग्वालियर मे मेरी सहमती से मेरा बच्चा गिराने (गर्भपात) के लिये याचिका लगई थी मै अपने बच्चे को नही रखना चाहती हूँ मेरी सहमती से ही मै इस बच्चे को गिराना (गर्भपात) चाहती हूँ मेरे ऊपर किसी का कोई दबाव नहीं है मे अपनी इच्छा से गर्भपात कराना चाहती हूँ ।”

5. This Court is dealing with the case of a girl aged about 18 years, who is carrying a foetus of a rapist and the girl, as well as her parents does not want that she should give birth to the child of a rapist. Not only this, the child will also have social stigma throughout his life and the girl, who is about 18 years of age, has to deliver a child which will certainly be a life threat to the pregnant girl apart from social ostracization.

6. The Supreme Court in the case of **Murugan Nayakkar Vs. 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 that the termination of pregnancy should be carried out. That 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.

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."

7. 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 medical report submitted by the Medical Board, this Court is of the opinion that the prayer made by the petitioner and her daughter deserves to be allowed and is accordingly allowed.

8. Thus, this Court while passing the order has to keep in mind the status report, the future of a girl aged 18 years, who is carrying a foetus of a rapist, the trauma she will have to face throughout her life while raising such child and not only this the child will also have to live his/her entire life with such social stigma.

9. In the present case girl (prosecutrix) though legally is in a

position to decide anything for herself. Section 3(1), 3 (2) (b) (i) and Section 5(1) of the Medical Termination of Pregnancy Act, 1971 which 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)...

(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 to her physical or mental health.

5. Sections 3 and 4 when not to apply.-
(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than

two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a 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."

10. Since there is risk of grave injury to her physical and mental health, this Court is of the opinion that it cannot remain a silent spectator to the agony of undergoing torture and has to act and take a decision. In view of such facts, this Court directs that let an inter-disciplinary team of doctors be constituted by the Dean of G.R. Medical College and they shall carry out the necessary procedure of termination of pregnancy on **29th March, 2023 at 10:00 AM** when the girl (prosecutrix) and her parents shall appear before the team of the doctors and fill necessary consent forms. It is also directed that senior doctor of the Department of Medicine and senior doctor of the Department of Cardiology shall examine the health condition of the girl (prosecutrix) before termination of pregnancy of girl (prosecutrix). It is requested that Dean of G.R. Medical College, Gwalior shall constitute team of senior and experienced doctors for the sake of humanity. It is further directed that in terms of the law laid down by Division Bench of Bombay High Court in the case of **Shaikh Ayesha Khatoon Vs. Union of India, reported in 2018 SCC OnLine Bom 11**, the

petitioner and her daughter shall be sensitized by the Committee/Medical Board about the risk factors involved in the procedure and it would be open for the petitioner's daughter 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 procedure.

11. It is further clarified that identity of the girl shall be kept a secret and shall not be revealed to anybody. This is being done looking to the future of the girl. It is also directed that no legal claim can be put forth on the team of the doctors by the girl or her parents as they have understood the possible complications and the team of doctors will not be liable to any legal complications arising out of such procedure. It is further directed that relevant department in the G.R. Medical College or its associates may carry out DNA sampling of the foetus and preserve report of such DNA sampling to be produced before the competent Court where criminal case is pending.

12. With the aforesaid directions, this writ petition is allowed and disposed of. No order as to costs.

13. Let a copy of the order be provided to learned Govt. Advocate free of cost for immediate transmission to the Dean, G.R. Medical College, Gwalior.

As the Advocates are abstaining from work, in the light

of the direction No.(ii) of para 18 of the order dated 24.03.2023 passed by the Division Bench of this Court at Jabalpur in **W.P.No.7295 of 2023 [In Reference (suo moto) Vs. Chairman, State Bar Council of M.P. and others]**, Registry is directed to register a contempt case separately against the following contemnors, who have filed Valakatnama on behalf of the petitioners and issue notice to them:

For the Petitiioners:

1. Shri Yash Sharma, Advocate.
2. Shri Saurabh Bhelsewale, Advocate.
3. Shri Sahil Chhabra, Advocate
4. Ms. Anuradha Sharma, Advocate.

Notices be made returnable within three weeks.

List the contempt petition immediately after three weeks for a date to be fixed by the Registry.

A copy of this order be retained in the contempt case to be registered by the Regisry as aforesaid.

E-copy/Certified copy as per rules/directions.

(Milind Ramesh Phadke)
Judge

Pawar/-