

W.P. No. 5521 of 2020**(X Minor through her mother Madhu Vs. State of M.P and others)****Indore dated: 19-3-2020**

Shri Ashish Choubey, Counsel for the petitioner

Shri Pourush Ranka, Counsel for the State

Heard finally.

This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :

“(i) To issue such order/writ to the respondent to grant permission/direction for termination of pregnancy of Victim/petitioner.

(ii) To direct respondent no.2 to carry out termination of pregnancy immediately.

(iii) Pass any such other appropriate order as may be deemed fit just and expedient in the interest of justice.”

2. The necessary facts for disposal of the present petition in short are that the petitioner lodged a FIR on 16-2-2020 against Rahul Pal, Sunita Pal, Dhruv Pal and Manoj Pal, on the allegations that She is aged about 17 years. Rahul Pal, on the pretext of marriage, developed physical relations with her, as a result of which She is carrying the pregnancy of 3 months. Thereafter, Rahul has refused to marry her. When She made complaint to his parents, namely Smt. Sunita Pal, and Dhruv Pal, then they also supported their son and scolded the petitioner. Similarly, Manoj Pal, who is the brother of Rahul Pal, also tried to outrage her modesty.

3. On this complaint, FIR No. 105/2020 has been registered at Police Station Dwarikapuri, Distt. Indore for offence under Sections 363,366-A,376(2)(n), 376-D,323,294, 354(A) of I.P.C., under Section

5,6,11,12 of POCSO Act, 2002 and under Section 3(1)(gh),3(1)(w)(i), (ii),3(2)(v),(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. This petition has been filed seeking permission to terminate the pregnancy. The petitioner claims herself to be a minor aged about 17 years.

5. This Court, by order dated 13-3-2020, directed the petitioner to appear before the Medical Board on 14-3-2020 at 11:00 AM in M.Y. Hospital Indore for medical examination by a Medical Board.

6. The Medical Board has submitted the following report:

“1. According to her USG report (dated on 16.03.2020) her pregnancy is 16 weeks +6 days.

2. According to two expert gynaecologists, patient has 16 week 6 day pregnancy, by sonography and according to MTP act she can undergo termination of pregnancy with anaemia correction.

3. As per psychiatric point of view petitioner on preliminary history and systematic examination shows no features of any psychiatric illness at present. She seems to possess age appropriate mental capacity and is of sound mind.

4. As per medicine opinion patient can be taken for termination procedure (medical/surgical) after correction of anemia (haemoglobin > 10 gm)

5. As per anesthetic opinion patient is clinically fit for now after correction of anemia. (haemoglobin > 10 gm).

6. In medical board members opinion, the petitioner is fit for termination of pregnancy after correction of anemia.”

7. Considered the submissions as well as the report submitted by the Medical Board.
8. 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 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 practitioners, 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.”

9. This Court is dealing with the case of a child aged about 17 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 his life and the girl, who is 17 years of age, has to deliver a child which will certainly result in life threat to the pregnant minor girl.

10. 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 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.

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.”

11. 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, MY Hospital, Indore, this Court is of the opinion that the prayer made by the petitioner deserves to be allowed and is accordingly allowed.

12. The respondents are directed to carry out termination of pregnancy immediately. The Chief Medical & Health Officer, District Indore is directed to admit the child (prosecutrix) **latest by**

tomorrow, i.e.20/03/2020, and termination of pregnancy be carried out as early as possible subject to the medical complications specifically after correction of anemia.

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

14. 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.”

15. 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

8

W.P. No. 5521 of 2020

Department of Anesthesia are not present, senior Doctors having experience in the field shall carry out the termination of pregnancy.

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

(G.S. Ahluwalia)
Judge

MKB*