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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
ON THE 23<sup>rd</sup> OF JUNE, 2022**

**WRIT PETITION No. 13842 of 2022**

**Between:-**

**A MINOR GIRLS THROUGH HER MOTHER F  
NOT MENTION (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SMT. DIVYAKEERTI BOHARE-ADVOCATE)**

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
THE CHIEF SECRETARY PUBLIC HEALTH AND  
FAMILY WELFARE DEPARTMENT VALLABH  
BHAWAN DISTRICT BHOPAL (MADHYA  
PRADESH)**
- 2. DEAN, DEPARTMENT OF OBSTETRICS AND  
GYNECOLOGY , NETAJI SUBHASH CHANDRA  
BOSE GOVERNMENT MEDICAL COLLEGE  
JABALPUR, M.P. (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY MS.SHWETA YADAV- GOVERNMENT ADVOCATE)**

.....  
*This petition coming on for admission this day, the court passed the  
following:*

**ORDER**

Heard finally with the consent of both the parties.

In this petition, under Article 226 of the Constitution of India, the  
petitioner has prayed for the following reliefs :-

"i. That, this Hon'ble Court may kindly be pleased to call the

record of the matter and direction may be given to the respondents to abort the foetus scientifically as soon as possible and to conduct DNA test of the foetus for the purpose of evidence in the trial.

ii. The victim who is a minor daughter of a poor widow is also seeking direction to give her appropriate compensation as per the policy of the state govt.

iii. Any other relief(s), which this Hon'ble Court deems just and necessary in the facts and circumstances of the case, may also be awarded to the petitioner."

Case of the petitioner is that a report was lodged by her mother at Police Station Ramnagar, District Satna for offence punishable under section 363 of IPC vide Crime No.235/2022. During investigation, the petitioner came to know about the pregnancy and medical examination was conducted by the registered Medical Practitioner, who gave the report of pregnancy as "positive". Since continuance of pregnancy would cause grave injury to mental health of the petitioner and would create a great mental agony for her entire life and may also invite socio-economic problems, therefore, she has filed the present writ petition seeking direction to the respondents authorities to terminate her pregnancy under the provisions of Sections 3,4 and 5 of the Medical Termination of Pregnancy Act 1971 and rules made thereunder. It is further submitted that according to Article 21 of the Constitution of India, she has right to live with dignity and with personal liberty and there can not be any restriction whatsoever on the exercise of reproductive choices. Admittedly the petitioner is above the age of 14 years.

This Court vide order dated 20.6.2022 directed respondent no.2, the

Dean, Department of Obstetrics and Gynecology, Netaji Subhash Chandra Bose Government Medical College, Jabalpur, to constitute a team consisting two lady medical practitioners (lady gynecologist) to get the petitioner medically examined to ascertain whether at this stage, the pregnancy of 25 weeks can be terminated or not?

Respondents in compliance of the aforesaid order, has produced a medical examination report submitted by the duly constituted Committee dated 22.06.2022, which is taken on record. The same is reproduced herein below :-

"Survivor 14 years, Resident of Gram-Pagara, Post-Mahudar, Tehsil-Amarpatan, District-Satna (M.P.) With reference to the order from Honorable High Court Jabalpur W.P.No.13842/2022 dated 20/06/2022, we undersigned opine that the survivor who is pregnant 24 weeks 5 days (documented obstetrics Ultrasonography on 21.6.22) is medically fit (by Physician) for termination of pregnancy (Hb 11.1 gm%, Tlc-  $5.86 \times 10^3/\mu\text{L}$ , platelet count-  $362 \times 10^3/\mu\text{L}$  which is within normal limit).

Opinion-

Team of expert committee (Three Gynaecologist and one Psychiatrist) examined the patient and after reviewing the investigation report, we opine that the Survivor's pregnancy can be terminated with Explained Risks and Consent."

The Medical Termination of Pregnancy Act, 1971 (for brevity 1971 Act) provides for termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. The

relevant sections 3, 4 and 5 of the said 1971 Act are reproduced below for ready reference and convenience:-

**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.

**4. Place where pregnancy may be terminated.**-No termination of pregnancy shall be made in accordance with this Act at any place other than,- (a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government.

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.]

**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.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.-For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.-For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession,

by registered medical practitioner, of experience or training in gynecology and obstetrics shall not apply.]

In view of the aforesaid, the termination of pregnancy is permissible where pregnancy does not exceed 20 weeks and if such termination is recommended by at least two registered medical practitioners who are of the opinion formed in good faith that continuance of pregnancy would involve risk to the pregnant woman.

Explanation 1 to section 3 (2) enlarges the definition of grave injury to mental health contemplated by section 3 (2) (b)(i) of 1971 Act, to include anguish suffered by a rape victim.

Thus the right interpretation of Explanation 1 to section 3 (2) is that even if a rape victim carrying pregnancy not exceeding twenty weeks is recommended by at least two registered medical practitioners to be not facing risk of life or grave injury solely due to pregnancy, even then the anguish which the rape victim suffers per se is sufficient to constitute grave injury to the mental health of the pregnant woman (victim of crime of rape).

In case of *Meera Santosh Pal and Others Vs. Union of India and Others, reported in 2017(I) MPWN 44*, the Apex Court has permitted the termination of pregnancy even after 24 weeks. Relevant portion of the aforesaid judgement is reproduced below:

"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..... The crucial consideration in the present case is whether the right to bodily integrity calls for a permission to allow her to terminate her pregnancy. The report of the Medical Board clearly warrants the inference that the continuance of the pregnancy involves the risk to the life of the pregnant woman and a possible grave injury to her physical or mental health as required by Section 3 (2)(i) of the Medical Termination of Pregnancy Act, 1971. Though, the pregnancy is into the 24th week, having regard to the danger to the life and the certain inability of the fetus to survive extra uterine life, we consider it appropriate to permit the petitioner to terminate the pregnancy. The overriding consideration is that she has a right to take all such steps as necessary to preserve her own life against the avoidable danger to it.

In recent judgment passed by the constitution bench of the Supreme Court in case of *Murugan Nayakkar Vs. Union of India and Others*, passed in *W.P(Civil). No.749/2017* the Court has permitted termination of pregnancy of a 13 year old victim of rape and sexual 7 abused, considering the trauma which she has suffered. Relevant portion of the aforesaid judgement is reproduced below:



"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 GULSHAN KUMAR 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".

In the light of the aforesaid law and judgments, considering age of the girl to be 14 years, trauma and agony which she has suffered and keeping in view the report of medical Board constituted by this Court vide order dated 20.06.2022, this Court is of the opinion that prayer made by the petitioner deserves to be allowed and is accordingly allowed. The case of the petitioner is covered under explanation of sub-section (2) of Section 3 of the Act, 1971. The respondent No.2 the Dean, Department of Obstetrics and Gynecology, Netaji Subhash Chandra Bose Government Medical College, Jabalpur is directed to carry out termination of pregnancy through a team of expert doctors

immediately if health condition of the girl i.e. the petitioner permit them to do so. The Doctors specialized in the field are the best experts to take decision about health condition of the girl before and after termination of the pregnancy. This Court is issuing directions only on the basis of the report of the duly constituted Medical Board and in view of the law laid down by the Apex Court in that cases referred hereinabove which shall be subject to health condition and the same shall be done in accordance with law. Respondents are directed to take immediate steps for termination of pregnancy within seven days positively and do the needful. It is needless to mention that Head of the Department of Gynecology, Head of Department Anesthesia and all other specialized doctors shall remain present at the time of termination of pregnancy. After the termination of pregnancy is carried out, the State of Madhya Pradesh shall ensure post-operative care of girl. The respondents are further directed that in the event pregnancy is terminated, they will keep DNA sample of foetus and shall also keep the same in a sealed cover as per procedure prescribed.

So far as prayer with regard to grant of compensation is concerned, the petitioner would be free to file a detailed representation before the competent authority seeking compensation under the Madhya Pradesh Crime Victim Compensation Scheme, 2015 within a periods of 15 days. If such a representation is filed within the aforesaid period, the competent authority of the respondents shall decide the same in accordance with the scheme as expeditiously as possible, preferably, within a period of 4 weeks thereafter.

With the aforesaid, present writ petition stands allowed.

No order as to costs.

C.C.today.

TG/-

