



2024:CGHC:48635

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 6041 of 2024

1 - Abc (Minor) Through Natural Guardian Xyz Nil

... Petitioners

versus

1 - State Of Chhattisgarh Through Its Secretary, Department Of Public Health And Family Welfare, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh – 492002.

2 - Chairman District Medical Board, Raipur District Hospital, District Raipur, Chhattisgarh 492001.

3 - Chairman District Medical Board, Raipur District Hospital, District Baloda Bazar Bhatapara, Chhattisgarh 493332.

4 - Chief Medical And Health Officer District Hospital, District Baloda Bazar Bhatapara, Chhattisgarh 493332.

5 - Station House Officer Police Station Kotwali, Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh 493332.

... Respondents

For Petitioner : Mr. Devashish Tiwari, Advocate.

For Respondent(s) : Mr. Satish Gupta, Govt. Advocate.

(Hon'ble Mr. Justice Naresh Kumar Chandravanshi)

Order on Board

10/12/2024

1. A minor victim of forcible sexual intercourse / rape by the accused in Crime No. 699 of 2023 registered at Police Station Kotwali Balodabazar, District Baloda Bazar has filed instant writ petition through her mother seeking the following reliefs :-

10.1 To permit the Petitioner to terminate her ongoing pregnancy through registered medical practitioners at any approved private or government center or Hospital before the completion of 24 weeks of pregnancy;

10.2 As and by way of interim relief, direct the Respondent No. 4 to constitute a Medical Board of five well reputed doctors including the doctors from the department of Obst. & Gynecology, department of Neonatology and Department of Psychiatry to examine the petitioner (victim) physically and as well as psychologically to submit a feasibility report in terms of the Medical Termination of Pregnancy Act, 1971 read with the Medical Termination of Pregnancy Rules 2003 alongwith determining the following :

- i. Whether carrying the pregnancy to the full term would impact upon the physical and mental well being of the Petitioner ?
- ii. Whether termination of the pregnancy can be carried out at this stage without any threat to the life of the petitioner.
- iii. Whether the age of the Petitioner would impact on the health condition of the Petitioner in case of medical termination of pregnancy ?
- iv. Whether the petitioner and her parents are consenting the said procedure as explained by the Doctors with regards to medical termination of pregnancy ?

10.3 To facilitate the pre-operational and post operational procedure, medical expenses and medical care of the Petitioner victim;

10.4 To direct the Respondent No. 1 to issue a circular providing a comprehensive Standard Operating Procedure to be followed by the Medical Officers and Medical Boards in case of termination of pregnancy.

10.5 To kindly may any other order as this Hon'ble Court deems fit and in the interest of justice of good conscience:

2. Learned counsel appearing for the petitioner submits that minor petitioner has been sexually exploited by the accused, therefore, FIR bearing Crime No.699/2023 has been registered at Police Station Kotwali Balodabazar, District Balodabazar against him. The petitioner has been medically examined by police, in which, she was reported "positive" about having pregnancy. Due to aforesaid sexual exploitation, the petitioner has conceived pregnancy of about 20 week & 4 day, but she does not want to carry the pregnancy. He further submits that the petitioner is minor girl, aged about 17 years and she is unmarried, her father has died and her mother is housewife. It is further contended that the pregnancy of child may be detrimental to the petitioner, therefore, she does not want to carry on pregnancy & deliver child, as such, this petition has been filed seeking permission of this Court for termination of her pregnancy.

3. When the case came-up for hearing before this Court on 05.12.2024, this Court has directed the Chief Medical and Health Officer, Balodabazar-Bhatapara to submit report with opinion with regard to medical termination of pregnancy of petitioner upon which, Chief Medical & Health Officer, Balodabazar-Bhatapara has submitted report alongwith various documents and report prepared by Team of doctors. Aforesaid report has been produced by learned Govt. Advocate appearing for the State before this Court.

4. Perusal of report shows that team of doctors have opined that the petitioner is aged about 17 years and she is carrying pregnancy of 20 week & 4 day. They have further opined that the petitioner is suffering from

severe anemia and sickle cell, therefore, after anemia correction, there is no contradiction for termination of pregnancy of the petitioner.

5. Learned counsel for the State submits that petitioner is minor girl, aged about 17 years and she has been sexually exploited. Since, she does not want to carry on her pregnancy, therefore, it may be presumed that if permission is not granted, then it would cause grave injury to the mental health of petitioner, as such, relief sought for may be granted to the petitioner.

6. I have heard learned counsel for the parties and perused the material available on record including medical report submitted by Chief Medical & Health Officer, Balodabazar Bhatapara.

7. Issue involved in the instant case is termination of pregnancy, which is governed by the provisions of Medical Termination of Pregnancy Act, 1971 (henceforth, Act, 1971). Section 3 of the said Act provides for termination of pregnancy by registered medical practitioner under the circumstances, as has been envisaged therein, which is reproduced 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.”

[In section 3 of the principal Act, for sub-section (2), the following sub-sections have been substituted vide Amendment Act, 2021, No. 8. of 2021]

"(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 pregnancy would involve such risk of injury to the health as is mentioned in subsection (2), account may be taken to 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 [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.”

8. From perusal of aforesaid provisions, it is evidently clear that it is not that termination of pregnancy is not impermissible at all, rather it is permissible in the given circumstances as is envisaged under Section 3 of the Act, 1971. In instant case, age of petitioner / minor victim is only 17 years, she is victim of rape and she does not want to carry on her pregnancy. Team of doctors have also submitted report to the effect that continuation of teenage pregnancy with severe anemia can have significant physical, emotional, social and economic consequences to the petitioner.

9. Having considered aforesaid facts, as has been stated above, it also cannot be denied that continuation of pregnancy can lead to complication at a later stage on both the count so far as the physical condition of the victim and also the psychological and mental condition is concerned. Although, the petitioner is suffering from severe anemia, but team of doctors opined that she may physically fit after correction of anemia.

10. In the case of “**Suchita Srivastav & Another v. Chandigarh Administration**” reported in **(2009) 9 SCC 1** , their Lordships of the Supreme Court in paragraphs 36 & 37 has held as under:-

“36. Courts in other common law jurisdictions have developed two distinct standards while exercising “*parens patriae*” jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the “best interests” test and the “substituted judgment” test.

37. As evident from its literal description, the “best interests” test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights.”

11. Likewise, again in the case of “**X v. Union of India & others**” reported in **(2016) 14 SCC 382** in paragraph No. 13 it has been held as under: -

“13. Having perused the medical report (relevant extracts whereof have been reproduced hereinabove), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy.”

12. The aforesaid judgment in the case of “**X v. Union of India & others**” the request for termination of pregnancy was in a case where the pregnancy was of more than 20 weeks. The Hon'ble Supreme Court further in the recent past have permitted termination of pregnancy in matters, where the pregnancy was more than 20 weeks. A few judgments of the Hon'ble Supreme Court are reported in **2017 (3) SCC 458 (X and others v. Union of India and others)**, **2017 (3) SCC 462 (Meera Santosh Pal and others v. Union of India and others)**, AIR

2017 SC 3931 (Tapasya Umesh Pisal v. Union of India and others) and **AIR 2017 SC 4037 (Mrs. A v. Union of India and others)**. In all these cases the age of the fetus were more than 20 weeks and taking into consideration the over all condition of the victim, the Hon'ble Supreme Court permitted termination of pregnancy.

13. In the instant case, the petitioner is carrying pregnancy of 20 weeks & four days and she is only 17 year of age. She has been victimized by sexual assault. It is also stated that her father is no more and her mother is said to be housewife, therefore, it can be supposed that she belongs to poor financial strata. In such circumstances, if the victim is permitted to undergo entire process of pregnancy and delivery, then it can lead to great physical, mental and psychological effect, not only on the victim, but also so far as the foetus is concerned.

14. This Court in WPC No. 270/2018 (**Ku. Pooja Mandavi v. State of Chhattisgarh and others**) decided on 02.02.2018 in paragraph No. 23 in a similar situation allowing the writ petition has held as under:

“23. Taking into consideration the entire facts including her age (13 years) and circumstances what has been stated by the victim, her gestational age, judicial precedents, taking into consideration her adolescent pregnancy and risk involved in childbirth, medical condition of the victim / petitioner, as she is suffering anemia and sickle cell (trait), considering the fact that the fetus if allowed to born, would have a limited life span with serious handicaps, and that as per Explanation I appended to sub-section (2) of [Section 3](#) of the Act of 1971 mental agony of a rape victim (petitioner) has to be treated as a case of grave injury, particularly taking into consideration that it is in the best interests of the victim alone which has to be kept in view and considering the provisions of [Sections 3](#) and [4](#) of the Act of 1971 and Explanation I that the

termination of pregnancy is immediately necessary to save the life of a pregnant girl like the petitioner herein, in the interest of justice, it would be proper to direct that a team of five doctors shall consider the feasibility of termination of pregnancy at this gestational age. Accordingly, the writ petition is allowed

15. Given the facts and circumstances of the instant case and further referring to the judgment of the Hon'ble Supreme Court in the case of "**A v. Union of India**" 2018 (14) SCC 75 and also "**Sarmishtha Chakraborty and Another v. Union of India**" 2018 (13) SCC 339 permitted termination of pregnancy at the stage where the victim was carrying for around 26 weeks. The Hon'ble Supreme Court in the case of "**Murugan nayakkar v. Union of India and others**" 2017 SCC Online 1092". Considering the fact that the victim of rape must be given that much of liberty and right to decide whether she should continue with the pregnancy or she should be permitted to terminate the pregnancy.

16. The victim of rape herself carrying stigma in her life. If facts situation of the case, she is not permitted to be terminate her pregnancy, which is result of rape, then it would be against her liberty and right to decide whether she continues with the pregnancy or not ?

17. For the foregoing reasons, this writ petition seeking permission for medical termination of pregnancy of petitioner, is allowed. Petitioner/minor victim is permitted to approach Chief Medical and Health Officer, Balodabazar, Bhatapara alongwith her mother, who in turn, shall ensure that pregnancy of petitioner be terminated after completing all the other requisite formalities required for the same and provide proper medical facilities alongwith correction of anemia to the petitioner. Chief Medical and Health Officer, Balodabazar- Bhatapra is further directed to issue

instructions to Pt. Jawaharlal Nehru Memorial Medical College, Raipur & Dr. Bheemrao Ambedkar Memorial Hospital, Raipur for terminating pregnancy of the petitioner under the supervision of at-least two registered medical practitioners including Specialist Doctors in the field of Department of Gynecology following the provisions of the Act, 1971. The Superintendent of Pt. Jawaharlal Nehru Memorial Medical College, Raipur & Dr. Bheemrao Ambedkar Memorial Hospital, Raipur are also directed to ensure that the DNA sample of the foetus shall also be taken and preserved for further evidence of criminal case.

18. Let this exercise be carried out without any further delay and after proper treatment of petitioner, so far as it relates to severe anemia is concerned. Mother of the petitioner is directed to approach before the Chief Medical & Health Officer, Balodabazar-Bhatapara on **11.12.2024** for the aforesaid purpose alongwith her daughter/petitioner. The Chief Medical & Health Officer, Balodabazar- Bhatapara shall further take all necessary steps. The State Counsel is also directed to intimate the Chief Medical & Health Officer, Balodabazar-Bhatapara as regards the next course of action that has to be taken.

19. It is also observed that Station House Officer of Police Station Kotwali, Balodabazar, District Balodabazar-Bhatapara shall cooperate with the Chief Medical & Health Officer, Balodabazar-Bhatapara for the aforesaid purpose.

20. The examination report submitted by State Counsel so far as the health condition of the petitioner, shall be made part of the record.

Certified copy as per rules.

Sd/-
(Naresh Kumar Chandravanshi)
Judge

