

Court No. - 40

Case :- WRIT - C No. - 22016 of 2023

Petitioner :- Ms X

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Raghav Arora

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Learned counsel for the petitioner is permitted to implead the Vice Chancellor, Aligarh Muslim University, Aligarh forthwith.
2. Heard Sri Raghav Arora, learned counsel for the petitioner and Sri Ambrish Shukla, learned Additional Chief Standing Counsel for the State respondents.
3. The petitioner, a minor, has approached this Court through her mother under Article 226 of Constitution of India, praying for issuance of directions by virtue of writ of mandamus to the respondents to conduct medical termination of her pregnancy under Medical Termination of Pregnancy Act, 1971, as amended in 2021 (hereinafter referred as MTP Act).
4. Facts and circumstances compelling the petitioner to file the instant petition are that the petitioner is a 12 years' minor girl, who was subjected to rape and sexually assaulted multiple times by her neighbour but due to her disability to speak and listen, she could not narrate her ordeal to anyone. As per the educational certificate of the petitioner, her date of birth is 17.04.2011 and she is about 12 years old. The petitioner was born with a disability of deafness and dumbness and as such, she cannot speak or listen. As per her disability certificate, she is 84% disable and already living a miserable life. The mother of the petitioner is a poor lady, who is a labourer and after demise of her father, the mother of the petitioner is in serious financial distress and barely able to fulfill her basic needs. For the first time, the mother of petitioner came to know on 15.06.2023 that her daughter has been sexually assaulted by her neighbour. When she asked the petitioner about the incidence, the petitioner communicated in sign language that she had been raped on multiple occasions. Consequently, the mother of the petitioner had lodged an FIR against the accused person and the same was registered as Case Crime No.457/2023 under Sections 376, 354C IPC and Sections 3, 4, 7, 8 of POCSO Act, Police Station Khurja Nagar, District Bulandshahar on 15.06.2023. Thereafter, the

medical examination of the petitioner was conducted on 16.06.2023, wherein it was found that the petitioner is carrying a pregnancy of 23 weeks.

5. In this backdrop, the mother of the petitioner moved a representation on 26.06.2023 before the concerned authority with a request for termination of pregnancy. The said representation was forwarded to the Chief Medical Officer, District Bulandshahar, who in turn constituted a Medical Board on 27.06.2023 to determine as to whether the pregnancy of the petitioner could be terminated or not. The Medical Board vide its report dated 30.06.2023 opined that as per the ultrasound report of the petitioner dated 28.06.2023 the petitioner was carrying the pregnancy of 25 weeks and two days but since the petitioner was suffering from severe anemia and the period of pregnancy has already gone beyond 24 weeks, which is stipulated in Medical Termination of Pregnancy Rules, 2021, accordingly the Medical Board had opined that in order to terminate the pregnancy of the petitioner, there would be requirement of permission from the Court. The said report is brought on record as Annexure No.6 to the writ petition.

6. In this backdrop, learned counsel for the petitioner submits that the petitioner is a 12 years' old deaf and dumb girl. The mother of the petitioner had also made a request to the Court that considering the miserable situation and age and medical condition of her daughter, they do not wish to continue with the pregnancy of the petitioner. However, the Medical Board opined on 30.06.2023 that the petitioner was carrying the pregnancy of more than 25 weeks and as such, she was beyond the permissible gestational age limit under the MTP Act, 1971. Hence, the petitioner was advised to approach this Court and seek judicial intervention. By way of present petition, following directions and reliefs have been sought from this Court:-

"i. To issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to terminate the unwanted pregnancy of the petitioner, which is the result of rape committed upon her, after making necessary arrangements for the same and;

ii. To issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to bear the complete expenses (including ambulance, hospital bills, medicines etc.) so incurred in termination of pregnancy of the petitioner.

iii. To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv. To award cost of the writ petition to the petitioner."

7. In support of his submission, learned counsel for the petitioner has placed reliance upon the decision in **Venkatalakshmi v. State of Karnataka** Civil Appeal No.15378/2017 dated 21.09.2017, wherein the Hon'ble Supreme Court had allowed the termination of pregnancy of rape victim beyond the gestational age of 24 weeks. The order is reproduced herein below:-

"Leave granted.

The appellant calls in question the legal propriety of the order dated 31st August, 2017 passed in Writ Petition No.38015 of 2017 whereby the High Court of Karnataka at Bengaluru has declined to entertain the prayer of the petitioner seeking termination of pregnancy. When the matter before this Court was listed on 18th September, 2017, the following order came to be passed:

"Let a copy of this special leave petition be served on Mr.V.N.Rathupathy, learned standing counsel for the State of Karnataka.

Signature Not Verified Let a copy of the special leave petition be also provided to Mr.Ranjit Kumar, learned Digitally signed by ASHOK RAJ SINGH Date: 2017.09.21 19:21:32 IST Reason:

Solicitor General who shall assist us in this matter.

In the meantime, Bangalore Medical College and Research Institute shall constitute a Medical Board to examine the victim as confirmed by Mr.Nikhil Nayyar. The victim shall appear before the Medical Board on Wednesday, 20th September, 2017 at 11.30 a.m. Mr.Ranjit Kumar, learned Solicitor General has assured this Court that he shall communicate the concerned competent authority about the order passed today.

Let the matter be listed again on Thursday, 21st September, 2017." In pursuance of our order, the Medical Board of Bangalore Medical College and Research Institute has examined the appellant and eventually has come to the conclusion which reads as follows:

"PSYCHIATRY EXAMINATION Patient Venkatalakshmi aged 17 years, (Psychiatry File Number 33350) was evaluated on 20/09/2017 between 12.30 pm and 3.30 pm. There were no reliable informants available for psychiatric evaluation. However, on examination, the child is intellectually within normal limits and is euthymic. She expressed remorse about her current state and wants to terminate the pregnancy. She is hopeful of continuing studies and is optimistic about future. No other psychopathology could be elicited on mental status examination.

BASED ON ALL THE ABOVE EXAMINATIONS AND INVESTIGATIONS, MS.VENKATALAKSHMI. V IS FOUND TO BE OF 26 WEEKS OF GESTATION WITH MILD ANAEMIA. WE ARE OF THE OPINION THAT THERE IS NO MEDICAL CONTRAINDICATION FOR

HER TO UNDERGO TERMINATION OF PREGNANCY AFTER CORRECTION OF ANAEMIA” It is absolutely necessary to state here that the appellant is a victim of rape. Regard being had to the aforesaid conclusion in the report submitted by the Medical Board, Bangalore Medical College and Research Institute, we direct as follows:

(i) The appellant shall make herself available at 11.30 a.m. on 22nd September, 2017 before the competent authority of the hospital. The person in-charge of the appellant shall take her to the hospital.

(ii) Mr.V.N.Raghupathy, learned counsel for the State of Karnataka shall intimate the competent authority where she is residing at present about this order.

(iii) After she reports at the hospital, the Director, Bangalore Medical College and Research Institute shall admit the patient and see to it that proper steps are taken for termination of pregnancy.

We may hasten to add that we are passing this order keeping in view the medical report and we are sure that the doctors while carrying out the operation procedure for termination of pregnancy, shall keep every safety aspect in view.

The State shall bear all the expenses necessary for the operation, medicines, food etc. of the patient.

The Institute shall preserve the terminus fetus as that may be necessary for the purpose of DNA testing with reference to Crime Case No.0247/2017 subject to order of this Court.

The appeal is accordingly allowed and the order passed by the High Court is set aside."

8. Learned counsel for the petitioner has further placed reliance on the judgements of High Court of Delhi at New Delhi in **W.P. (CRL) 221/2023 (Minor R The Mother vs. State of NCT of Delhi & another)** decided on 25.01.2023 and **W.P. (C) No.5112/2023 (GDN vs. Government of NCT of Delhi) decided on 28.04.2023.**

9. At present, the issue before this Court is, whether under the facts and circumstances a rape victim of 12 years, who is deaf and dumb and carrying the pregnancy of more than 24 weeks, can be permitted to terminate the same.

10. In order to appreciate the contentions of the petitioner and decide the issue at hand, it would be apt to reproduce Section 3 of MTP Act 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 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
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(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 a 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 reasonably 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."

11. Section 3 of MTP Act provides that termination of pregnancy of a woman where it exceeds 20 weeks but does not exceed 24 weeks can only be allowed in special categories, and where the medical practitioners are of the opinion that continuance of such pregnancy would either involve a risk to the life of the women or cause grave injury to her physical health or grave injury to her mental health. The categories, under which pregnancy can be terminated where pregnancy is between 20 to 24 weeks, has been prescribed by the Central Government under the Medical Termination of Pregnancy, Rules 2003 [as amended by Medical Termination of Pregnancy (Amendment) Rules, 2021], wherein seven categories have been provided which are as under: -

"3B. Women eligible for termination of pregnancy up to twenty-four weeks.--

The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely:-

- (a) **survivors of sexual assault or rape or incest;**
- (b) **minors;**
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);
- (d) women with physical disabilities [major disability as per criteria laid down

under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];

(e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government."

12. A perusal of the aforesaid Rule reveals that clause (a) relates to victims of sexual assault, rape or incest and clause (b) relates to minors. In the present case, the victim falls under both, i.e. clause (a) and (b) as she is a minor aged around 12 years, who is alleged to have been raped. Therefore, the victim would fall under the special categories as enumerated by the Central Government under the rules notified as per the mandate of section 3(2)(b) of MTP Act.

13. Furthermore, Explanation 2 to the aforesaid provision explicitly provides that where pregnancy is alleged to have been caused by an act of rape, the anguish caused by such a pregnancy shall be presumed to constitute grave injury to the mental health of pregnant woman as required under Section 3(2)(i) of MTP Act. Therefore, it is not in dispute that in case of a minor victim, who is alleged to be sexually assaulted or raped and as a consequence of which she has conceived, the injury that is caused to her mental health is presumed even statutorily.

14. The question before this Court now remains as to whether this Court, using its extraordinary powers under Article 226, should allow the termination of pregnancy of minor victim at the stage of around 25 weeks of pregnancy.

15. During the mid of the hearing, learned counsel for the petitioner further submits that the pregnancy is more than gestational age of 25 weeks, which requires proper facilities. There is proper medical facilities at Jawahar Lal Medical College, Aligarh, which is affiliated to Aligarh Muslim University, wherein, her pregnancy may be terminated under the able guidance of medical experts.

16. In this backdrop, we have straightaway called Sri Shashank Shekhar Singh, Advocate, who represents Aligarh Muslim University before this Court, for necessary assistance.

17. Under similar circumstances, the Hon'ble Apex Court in **Venkatalakshmi v. State of Karnataka** (supra), as well as the Division Benches of High Court of Delhi in **Minor R The Mother vs. State of NCT of Delhi & another** (supra) and **GDN vs. Government of NCT of Delh** (supra) had also allowed termination of pregnancies of more than 24 weeks in cases of rape victims.

18. Though the statute does not provide for termination of pregnancies over the gestational age of 24 weeks except in case of detection of substantial foetal abnormalities, the provision in regard to which is Section 3(2B) of MTP Act, the extraordinary powers of the Constitutional Courts, however, have been recognized even by the Hon'ble Supreme Court of India and exercised several times by the High Courts to allow termination of pregnancies even in cases where pregnancy has exceeded the limit of 24 weeks.

19. In the case of sexual assault, denying a women right to say no to medical termination of pregnancy and fasten her with responsibility of motherhood would amount to denying her human right to live with dignity as she has a right in relation to her body which includes saying Yes or No to being a mother. Section 3(2) of the MTP Act reiterates that right of a woman. To force the victim to give birth to child of a man who sexually assaulted would result in unexplainable miseries.

20. Considering the urgency in the matter and taking humanitarian view as the petitioner is a 12 years rape victim, we request the Vice Chancellor, Aligarh Muslim University to direct the Principal, Jawahar Lal Medical College, Aligarh to constitute a Five-Members Team headed by Department of Obs & Gynae; Department of Anaesthesia and Department of Radio Diagnosis to examine the petitioner **tomorrow i.e. 11.07.2023** and submit a report before this Court in sealed cover on **12.07.2023** through Sri Shashank Shekhar Singh, learned counsel for the Aligarh Muslim University

21. The District Magistrate, Bulandshahar is directed to ensure that the victim alongwith her mother may appear before the Medical Board on **11.07.2023 at 10 AM.**

22. Put up this matter again as fresh on **12.07.2023 at 2 PM.**

23. Let a copy of the order be given to learned counsel for the petitioner; Sri Ambrish Shukla, learned Additional Chief Standing

Counsel and Sri Shashank Shekhar Singh, learned counsel for the Aligarh Muslim University free of cost **today** for compliance.

Order Date :- 10.7.2023

RKP