

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 8471 OF 2022

‘XXX’

(through her father
Mr. Sachinder Yadav
Since minor)

.....Petitioner

Vs.

The State of Maharashtra

..... Respondent

Mr. Pravin Naik with Geetashri Bejjanki, Advocates for
Petitioner.

Ms. S. D. Shinde, APP for State.

CORAM: P.D.NAIK &
ABHAY AHUJA, JJ
DATED : 23RD MAY, 2022

(VACATION COURT)

JUDGMENT : (PER ABHAY AHUJA, J.)

1. Rule. With the consent of the counsel for the parties,
Rule is made returnable forthwith and heard finally.
2. The Petitioner is referred to as ‘XXX’ herein to keep
her identity confidential.
3. This petition is filed by Petitioner, who is a minor girl
aged 14 years and 6 months, in her 15th to 16th week of
pregnancy, through her father for permission to undergo
medical termination of pregnancy.

4. It is mentioned in the petition that an FIR no. 436/2022 was lodged at Virar Police station under section 376(3) of the I.P.C. and under sections 4, 8 and 12 of the Protection of Children from Sexual Offences, Act, 2012. The victim was allegedly sexually assaulted/raped by accused named in the FIR, who is purportedly her cousin brother, at her ancestral home in Bihar. The survivor returned to Mumbai on 07.02. 2022. She developed multiple vomiting episodes in late April 2022 when her mother took her to Balaji Hospital, where it was found that she was pregnant. Her LMP was 21.01.2022. Thereafter Petitioner was referred to JJ Hospital for further medical check up and she underwent medical examination at JJ Hospital from 30.04.2022 to 02.05.2022. Medical report dated 2nd May 2022 mentions that fetus is single live early intrauterine gestation of gestational age 12 weeks and 5 days. As Petitioner was a minor, FIR was lodged at the Virar Police Station on 18th May 2022.

5. It is submitted that since Petitioner is minor victim of alleged sexual assault, this petition has been filed seeking appropriate directions in her best interest/ permission from this court to medically terminate her pregnancy considering her tender age.

6. The learned Counsel for the petitioner submitted that the mental trauma that the victim petitioner is undergoing because of the pregnancy caused due to the offence of rape was causing serious injury to her mental health. Besides this, there was inherent risk to her life because of pregnancy at such a tender age.

7. On May 19th, 2022 this Court (Coram: Nitin W Sambre and Anil L Pansare, JJ) passed the following order:

“P.C.:_

1] Heard learned Counsel for the Petitioner and learned APP for the Respondent/State.

2] Learned APP has produced on record report dated 18th May 2022 alongwith certain medical papers.

3] Perused the medical papers produced by learned APP alongwith report of the Investigating Officer Mr. Pravin Bhosale, API, Virar Police Station. The said report dated 18th May, 2022 is taken on record and marked “X” for the purpose of identification. The age of the victim girl is mentioned to be 14 years and 6 months and she is alleged to be carrying pregnancy of about 13 weeks.

4] The accused is yet to be traced and arrested in the matter.

5] In the aforesaid backdrop, having regard to the fact that victim girl was subjected to medical examination on 2nd May 2022 in Sir J.J. Group of Hospitals and GMC, it will be appropriate in our opinion to direct the Dean of Sir J.J. Group of Hospitals and GMC to constitute an Expert Committee to evaluate health condition of the victim girl and submit its detail report as regards her health condition and viability of permitting medical termination of pregnancy.

6] Counsel for the Petitioner assures that Petitioner shall be appearing before the Dean, Sir J.J. Group of Hospitals and GMC tomorrow i.e. on 20th May, 2022 at 9.30 A.M.

7] Let the report of the Expert Committee be placed before this Court on 23rd May, 2022.

8] Stand over to 23rd May, 2022.”

8. Today, the report of the Expert Committee of Sir JJ Group of Hospitals and Grant Govt. Medical College, Mumbai

is tendered before us in sealed envelope. The envelope is opened in the court. The report under cover letter dated 23th May 2022 of the Committee reads thus:

“After careful examination of the patient and study of the ultrasonography report and psychiatric evaluation the committee has come to the opinion that at present no abnormality is detected in the fetus and the pregnant minor mother. The victim is 14 years old and is anguished by the pregnancy.

Continuation of pregnancy in minor may lead to pregnancy related complications like Anemia, pregnancy induced hypertension as well as complications during labour and increased operative interference. The continuation of pregnancy will have grave psychological impact on the pregnant minor’s mental health.

Since the pregnancy is 16.1 weeks BD and 15.3 weeks by scan and is well within the legal limits of MTP. The termination of pregnancy can be carried out at any institute that the minor and guardian choose”

9. We have heard Mr Pravin Naik, the learned Counsel for the petitioner and Ms. S. D. Shinde, the learned APP for the Respondent-State and perused the aforesaid report and given our anxious consideration to the committee opinion as well as the recommendations of the experts therein.

10. It is clear from the above opinion of the committee that continuation of pregnancy of minor may lead to pregnancy related complications like anemia, pregnancy induced hypertension as well as complications during labour and increased operative interference during labour and will also have grave psychological impact on the pregnant minor’s mental health. It is therefore

recommended that since the girl is a minor and as case of alleged sexual assault, she cannot continue the pregnancy to term.

11. The law in such cases is fairly well settled. In several decisions of this court including WP No. 12054 of 2019 ('X' Vs. The State of Maharashtra) and WP(L) No. 11131 of 2021, ("X", since minor through her father Mr. Jitendra Kumar Singh), this Court has permitted medical termination of pregnancy in cases of victims of alleged sexual assault. This is an unusual and unfortunate case of a minor. Considering the physiological and psychological injury that she may suffer by virtue of her continued pregnancy at such a tender age, forcing Petitioner to continue with the pregnancy would be a serious affront to her fundamental right to exercise reproductive choices, to her bodily integrity and her dignity. We therefore do not propose to take any different view from what has been taken in the above quoted decisions.

12. Section 3 of the Medical Termination Pregnancy Act, 1971 ("MTP 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 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 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."

13. Under Section 3(2)(b) of the MTP Act, the maximum period of pregnancy is prescribed as twenty four weeks. The circumstances under which the pregnancy can be terminated are also set out under this Section. One such circumstance, as mentioned in Section 3(2)(b)(i) is that the termination of pregnancy is allowed if the continuance of the pregnancy involved a risk to the life of the pregnant woman or grave injury to her physical or mental health. Explanation 2 to this sub-section provides that when the

pregnancy has 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.

14. The Hon'ble Supreme Court in the case of ***Z Vs. State of Bihar and others, (2018) 11 SCC 572*** has recognised the above principle though with reference to the pre-amended provisions. Paragraph 21 thereof is relevant and is quoted as under:-

“21. We have underlined the relevant part of the provision for the purpose that where length of pregnancy exceeds 12 weeks but does not exceed 20 weeks, two registered medical practitioners, after forming an opinion in good faith, that 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 and that there is a substantial risk that if the child were born, it would suffer from physical, mental abnormalities as to be seriously handicapped, may terminate the pregnancy. Explanation 1 to sub-section (2) of section 3 to which our attention has been drawn postulates that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the same has to be presumed to constitute a grave injury to the mental health of the pregnant woman. Once such a statutory presumption is provided, the same comes within the compartment of grave injury to mental health. Sub-section (4) of section 3 requires consent of the guardian of a minor, or a major who is mentally ill person. The opinion to be formed by the medical practitioners is to be in good faith”.

(emphasis supplied)

15. In the instant case, Petitioner's pregnancy has been caused by the alleged rape, which reportedly has caused anguish to Petitioner, constituting grave injury to the

mental health of Petitioner. There is therefore no doubt that continuance of this pregnancy will continue to cause a grave injury to the mental health of Petitioner. Apart from this, considering her tender age of 14 years and six months, there is an inherent risk to her life. Therefore, although the statutory period of twenty four weeks is not over, however, Petitioner being a victim of alleged sexual assault suffering grave injury to her mental health, in view of our above observations, Petitioner will have to be permitted to undergo medical termination of pregnancy.

16. Considering the above discussion, we pass the following order:

ORDER

(i) Petitioner is permitted to undergo medical termination of pregnancy as per Expert Committee's report on 25th May 2022, at JJ Hospital, Mumbai.

(ii) The Dean of the JJ Group of Hospitals, Mumbai shall ensure that the procedure is performed at a place which satisfies all the requirements of the MTP Rules 2003 and the procedure shall be conducted by the Medical Practitioner who satisfies the conditions laid down under those rules.

(iii) The blood sample and tissue sample of the fetus shall be preserved for the purpose of carrying out necessary medical tests including DNA and other tests. The Investigating Officer conducting investigation shall ensure that the samples are forwarded to Forensic Science Laboratory and the samples shall be preserved for the

purpose of trial of the offence registered under FIR no. 436 of 2022.

(iv) In case, if the child is born alive, the Medical Practitioner who conducts the procedure will ensure that all necessary medical facilities are made available to such child for saving life.

(v) In case, if the child is born alive and if the petitioner and her parents are not willing or are not in a position to take responsibility of such a child then the State and its agencies will have to assume full responsibility for such child.

(vi) Rule is made absolute in the aforesaid terms.

(vii) No order as to costs.

(viii) All concerned to act on an authenticated copy of this order. Learned A.G.P. is directed to send an authenticated copy of this order to the Investigating Officer who is conducting investigation in the present case.

(ABHAY AHUJA, J.)

(P. D. NAIK, J.)