

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6415 of 2023

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XYZ MINOR VICTIM THRO BABUBHAI ISHWARBHAI DIGARI
Versus
STATE OF GUJARAT

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Appearance:

MR DAKSHESH MEHTA(2430) for the Applicant(s) No. 1
MR. RUSHANG D MEHTA(6989) for the Applicant(s) No. 1
NOTICE NOT RECD BACK for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 3
MR JK SHAH APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 07/06/2023

ORAL ORDER

1. By way of this petition, the petitioner has prayed for the following reliefs;

“(A) Your Lordships may be pleased to admit and allow this application.

(B) Your Lordships may be pleased to issue appropriate writ or order or direction to the respondent authorities to terminate the pregnancy of the minor daughter of the petitioner who is 17 years and 2 months, at the earliest, as the same being in the best interest of the victim, considering her very young age, physical health and

incident of rape causing grave injury to her mental health and further be pleased to direct the respondent No.3 to hand over, in scientific manner, the tissues drawn from the fetus for DNA identification to the Police Inspector (In-charge), Anjar Police Station for onward transmission of the same to the concerned Forensic Science Laboratory, in the interest of justice;

(C) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents to conduct medical termination of pregnancy of the minor victim with two qualified surgeons including Gynecologist, Obstetrician and in presence of qualified physician with due care and precaution after carrying out necessary medical check-up so as to avoid likelihood of untoward harm to the physical or mental health of the minor victim in the interest of justice;”

(D)

2. On 31.05.2023 the Coordinate Bench of this Court had passed the following order in this matter;

“1. This petition is filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking following reliefs:-

“(A) Your Lordships may be pleased to admit and allow this a Application;

(B) Your Lordships may be pleased to issue appropriate writ or order or direction to the respondent authorities to terminate the pregnancy of the minor daughter of the petitioner who is 17 years and 2 months, at the earliest, as the same being in the best interest of the victim, considering her very young age, physical health and incident of rape causing grave injury to her mental health; and further be pleased to direct the respondent no.3 to hand over, in scientific manner, the tissues drawn from the fetus for DNA identification to the Police Inspector (In Charge), Anjar Police Station for onward transmission of the same to the concerned Forensic Science Laboratory, in the interest of justice; b. Pending admission, hearing and final disposal of this petition, the Hon’ble Lordships may be pleased to direct the respondents to conduct medical termination of pregnancy of the minor victim with two qualified surgeons including gynecologist, Obstetrician and in presence of qualified physician with due care and precaution after carrying out necessary medical checkup, so as to avoid likelihood of untoward harm to the physical or mental health of the minor victim, in there interest of justice;”

2. The present petition is filed by the victim girl, through her father, who is a rape victim in connection with the FIR bearing No.11993003230521 of 2023, registered with Anjar Police Station, District: Kutch, for the offence under Sections 376(2)(n) and 506(2) of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. Issue Notice returnable on 07.06.2023. Learned APP waives service of notice for the respondent-State.

4. The petitioner has prayed for termination of pregnancy, which is of about 19 weeks, as per the report of the doctor.

5. Considering the submissions made by the learned advocates for the respective parties and averments made in this petition, the Medical Officer of Civil Hospital, Bhuj is directed to form a panel of expert and examine the mental and physical condition of the victim for termination of pregnancy and about the risk factor. It is also directed that the Medical Officer shall complete the aforesaid

exercise on or before 7th June, 2023.

6. *The Medical Officer shall report to this Court about the above aspects through learned APP on or before 07.06.2023. Learned APP is directed to intimate / communicate this order to the concerned authorities.*

7. *Direct service is permitted, TODAY.”*

3. Pursuant to the above order, it appears that the original victim was examined by the panel of Doctors of Gujarat Adani Institute of Medical Sciences, G.K. General Hospital, Bhuj-Kutch on the aspect of undergoing medical termination of pregnancy. After such examination, the panel of Doctors have submitted their opinion dated 05.06.2023, which is reproduced hereunder;

“This is to certify that I have examined (xxx), alleged case of rape (MLC No.-1704/2023) at GKGH Hospital, Bhuj who was referred to me for opinion on eligibility for MTP in view of pregnancy occurring as a result of rape. She is a primigravida with 20 Weeks 1 Day of pregnancy as per ultrasound. On pelvic examination, uterine size is 20-22 weeks. Overall patient is in good general condition for MTP and her risk of complication of MTP is comparable to other woman of same age and gestation age and hence, the same can be proceeded with at the earliest to avoid MTW complication associated with

advancing gestational age.”

4. It appears from the material on record that the original victim was aged about 17 years and 2 months at the time when this application was filed. As on 05.06.2023, the original victim is said to be carrying pregnancy of 20 Weeks 1 days, as per the opinion given by the panel of Doctors.

5. A coordinate Bench of this Court (Coram : V.M. Pancholi, J.) had an occasion to deal with a case relating to medical termination of pregnancy and vide order passed in Special Criminal Application No.5201 of 2021 dated 11.06.2021, the Court had allowed medical termination of pregnancy.

6. The Delhi High Court in a judgment rendered in the case of Mrs. A v. GNCTD and another reported in 2023 SCC OnLine Del 1405 had permitted medical termination of pregnancy as it was found by the Medical Board consisting of six Doctors that the foetus was suffering from “hypoplastic left heart syndrome” and did not have a positive post-natal prognosis, i.e. after birth, the prognosis for the foetus was quite poor. In that case, the patient was carrying pregnancy of 28 weeks 02 days when the medical termination of pregnancy was undertaken and accordingly, the Delhi High Court had allowed medical termination of pregnancy.

7. Of course, a direction regarding medical termination of pregnancy depends upon the facts and circumstances of each case. Considering the facts of this case and the medical evidence on record as also the object of the Medical Termination of Pregnancy (Amendment) Act, 2021 and the guidelines framed by the Indian Medical Association, it would be just, legal and appropriate to order medical termination of pregnancy of the original victim, i.e. daughter of the petitioner herein.

8. In the result, the petition is allowed. The respondents herein are directed to undertake necessary medical procedure, with all due care and precautions, for the medical termination of pregnancy of the original victim, i.e. daughter of the petitioner herein. The said medical procedure shall be undertaken at the earliest possible time considering the mental and physical health of the original victim. With the above directions, the petition stands disposed of. Rule is made absolute. Direct service permitted.

(SAMIR J. DAVE,J)

PRAVIN KARUNAN