

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/SPECIAL CRIMINAL APPLICATION NO. 2814 of 2022

=====

A B C (VICTIM)  
Versus  
STATE OF GUJARAT

=====

Appearance:

MR PV PATADIYA(5924) for the Applicant(s) No. 1  
for the Respondent(s) No. 2,3  
MR RONAK RAVAL, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 17/03/2022

ORAL ORDER

1. Rule. Learned APP Mr. Ronak Raval waives service of notice of Rule for the respondent - State.
2. Heard learned advocate Mr. P. V. Patadiya for the petitioner and learned APP Mr. Ronak Raval for the respondent - State.
3. Learned advocate for the petitioner submits that initially the FIR being C.R.No.11206074210981 of 2021 registered with Vijapur Police Station, District Mehsana for the offence punishable under Sections 363 and 366 came to be registered on 18.12.2021 against the concerned accused person. However, as the petitioner was traced, on 04.03.2022, she was produced before the Medical Officer and during the course of medical examination the petitioner was found to be pregnant and therefore report for

addition of Section 376(n) of IPC and Sections 4, 5(L), 6, 8 and 12 of POCSO Act was made on 07.03.2022. It is mainly alleged that on 03.10.2021, the petitioner has been kidnapped by the accused named in the FIR. As the father of the petitioner did not know the whereabouts of the petitioner, ultimately he lodged FIR on 18.12.2020 against the concerned accused person.

4. It is further submitted that the age of the petitioner victim - complainant is 17 years and 2 months.

4.1. At this stage, it is submitted that during the course of medical examination carried out on 05.03.2022, it was found that the victim girl was having pregnancy of 6 weeks and 3 days. It is submitted that the petitioner is a victim of rape case and her mental health coupled with the fact that bearing and rearing of a child in the womb would create a great mental agony to her for her entire life and may invite other social economical problems and, hence, the petitioner has expressed her willingness to terminate her pregnancy through her father. It is further submitted that the father of the victim has produced a consent letter on behalf of minor petitioner. Petitioner is also willing to terminate her pregnancy.

5. Learned advocate for the petitioner has placed reliance upon the provision of Medical Termination of Pregnancy (Amendment) Act, 2021 (hereinafter referred

to "MTP Act, 2021" for short) and submitted that in the said provision, it is specifically provided that where there is any pregnancy alleged by the pregnant woman to have been caused by rape, anguish cause by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Referring to the said provision, it is contended that the case of the petitioner - victim falls in such criteria and thus, appropriate direction may be issued.

6. Learned advocate for the petitioner has placed reliance upon the judgment of the Hon'ble Apex Court in case of **Ms. Z Vs. State of Bihar**, reported in (2018) 11 SCC 572 as well as the judgment of this Court in case of **Janak Ramsang Kanzariya (minor) through Manjuben Knazar Vs. State of Gujarat & Anr.**, reported in 2011 Cri.L.J. 1306. Relying upon the judgment of this Court, it is contended that in case of pregnancy of 12 weeks, permission was granted for termination of pregnancy. It is, therefore, urged that this petition be allowed and relief as prayed for be granted.

7. This Court has passed an interim order on 15.03.2022, which reads as under:

*"1. This petition is filed by the petitioner under Article 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 (in brief, 'the Code'), seeking following reliefs:*

"7. ...

(A) Your Lordships may be pleased to issue appropriate writ or order or direction to the respondent authority to terminate the pregnancy of the petitioner who is aged 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 Sub Inspector, Vijapur Police Station, Mehsana for onward transmission of the same to the concerned Forensic Science Laboratory, interest of justice;

(B) 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 checkup, so as to avoid any likelihood of untoward harm to the physical or mental health of the minor victim, in the interest of justice;

(C) Any other and Further relief/s which may be deemed fit by this Hon'ble Court be granted"

2. The present petition is filed by the father of the victim girl, who is a rape victim in connection with the FIR bearing No. 11206074210981 of 2021, registered with Vijapur Police Station, District: Mahesana, under Sections 363 and 366 of the Indian Penal Code.

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

3. Learned APP, Mr. Raval, as well as the learned Advocate for the petitioner, Mr. Patadia, jointly submitted that for such type of cases, the necessary facilities are available at G.M.E.R.S. Hospital, Vadnagar, where, the victim girl was examined. It was, therefore, submitted that, if, the victim girl is taken to the said hospital, she shall be examined there, accordingly.

4. In view of the above, the petitioner shall go to G.M.E.R.S. Hospital, Vadnagar, along with the victim girl on 16TH MARCH, 2022, at about 11:00 A.M., for her medical examination, whereupon, she will be examined by the expert doctors of the hospital.

4.1 The senior expert Doctors at G.M.E.R.S General Hospital, Vadnagar, are DIRECTED to examine the victim for termination of pregnancy and about the risk factor. Moreover, the doctors shall also mention the stage of pregnancy and medical position of the victim girl and shall CLARIFY, as to whether, termination of pregnancy of victim girl could be performed or not by giving detailed reasons.

4.2 The Medical Officer shall report to this Court about the above aspects through learned APP on or before 17th March, 2022.

4.3 Learned APP is DIRECTED to intimate / communicate this order to the concern authorities, i.e. the officials of G.M.E.R.S Hospital and Vijapur Police Station.

5. Stand over to 17TH MARCH, 2022. Direct service is permitted, TODAY."

8. Pursuant to the aforesaid order dated 15.03.2022 passed by this Court in the present matter, learned APP has placed on record an opinion dated 16.03.2022 given by the panel Doctors of G.M.E.R.S General

Hospital, Vadnagar. The said opinion reads as under:

"Here come for expert opinion for MTP Done or Not.

I/D (1) small Black mole over left side of neck

(2) small Black mole over upper chest.

According to panel (1) Dr. Nikhil Anand (Asso. Prof) (2) Dr. Komal Modi (Asso. Prof) (3) Dr. Neha Makwana (Asst. Prof.) suggest that medical termination of pregnancy of this victim can be done at GMERS Vadnagar under MTP Act with patient's guardian's consent with minimal risks involved in surgical procedures such as Anesthesia related risks, Risks of Bleeding, perforation, infection and incomplete procedure."

9. On the basis of the aforesaid opinion, learned APP submits that this Court may pass appropriate order in the interest of the petitioner - victim.

10. I have considered the submissions canvassed by learned advocate Mr. Patadiya appearing for the petitioner and learned APP Mr. Ronak Raval for the respondent - State. I have also considered the documents produced on record including the opinion dated 16.03.2022 given by the panel doctors of G.M.E.R.S General Hospital, Vadnagar.

11. Section 3 of the MTP Act, 2021 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 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 to her 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 a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken to the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) ...

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman."

12. Thus from the above provision, it is clear that as per Section 3 of the MTP Act, 2021, where the length of pregnancy does not exceed 12 weeks, the registered Medical Practitioner and where such length of pregnancy exceed 12 weeks but does not exceed 20 weeks, two Medical Practitioners can terminate the pregnancy. But they have to form an opinion that the continuation of pregnancy would invoke a risk to the life of the pregnant woman or of grave injury to her physical life of the pregnant woman or of grave injury to her physical or mental health or 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. Thus on perusal of Section 3 of the MPT Act, 2021, it is clear that that section allows abortion only if



specific conditions are met with. Thus, from the opinion given by the penal doctors of G. G. Hospital, Jamnagar after medical examination of the victim girl, it is revealed that the concerned doctors are of the opinion that the victim can undergo MTP with due risk of complications, few of them mentioned are haemorrhage, retained product of conception and infection. It is also stated that if MTP is considered then it should be performed without delay to avoid major complications and other adverse effects like negative impact on her mental, social, physical condition.

13. Further, in this case, the petitioner is pregnant because of forcible rape by the accused. As contended by learned advocate for the petitioner, petitioner as well as her father have given consent for termination of pregnancy. It is also contended that because of continuation of pregnancy, it would cause or constitute a grave injury to the mental health of the minor - victim coupled with the fact that bearing and rearing of child in the womb would create a great mental agony to her for her entire life and invite many other socio-economical problems. This can be said to be a grave injury to the mental health of the pregnant woman.

14. I have also considered the judgment upon which reliance has been placed by learned advocate for the petitioner in case of **Janak Ramsang Kanzariya (supra)**. In that case also, the Court has granted permission

for termination of pregnancy of 12 weeks. I have also considered the judgment of Hon'ble Supreme Court in case of **Sarmistha Chakraborty Vs. Union of India** reported in (2018) 13 SCC 339, where also the Hon'ble Supreme Court has granted permission to terminate the pregnancy of 25 weeks.

15. Considering the contents of the petition, provision of the applicable law, ratio laid down by the Hon'ble Supreme Court in above referred to cases, right of privacy of the petitioner, medical reports, and bearing in mind the best interest principle, as discussed herein above, I am of the view that the present petition deserves to be allowed as prayed for only with a view to save and protect the life of the petitioner - victim.

16. Therefore, the present petition stands allowed. The concerned Doctors shall terminate the pregnancy with due risk after ANC profile report. The In-charge Medical Officer & Medical Superintendent, G.M.E.R.S General Hospital, Vadnagar shall hand over, in scientific manner, the tissues drawn from the foetus for DNA identification to the investigating officer of the crime registered by the petitioner against the accused at Vijapur Police Station, District Mehsana for onward transmission of the same to the concerned Forensic Science Laboratory. Registry to provide copy of this order to learned APP for onward communication and to the learned advocate for the petitioner, to the concerned investigating officer and G.M.E.R.S

General Hospital, Vadnagar for follow up action.

17. Rule is made absolute to the aforesaid extent.  
Direct service today is permitted.

(VIPUL M. PANCHOLI, J)

LAVKUMAR J JANI

