



2024:KER:21167

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 15<sup>TH</sup> DAY OF MARCH 2024 / 25TH PHALGUNA, 1945

WP(C) NO. 9016 OF 2024

PETITIONER/ACCUSED NO.2:

GWARE MARGRET SEBINA

AGED 32 YEARS

D/O EZIEQUELE GWARO, GUCHA DISTRICT, KENYA NOW AT WOMEN'S  
JAIL AND CORRECTION HOME, VIYYUR, PIN - 680010

BY ADVS.

ANEESH K.R

SAURAV B.

LIA GEORGE

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY MINISTRY OF WOMEN AND CHILD DEVELOPMENT,  
SASTHI BHAVAN, NEW DELHI, PIN - 110001
- 2 STATE OF KERALA  
REPRESENTED BY GOVERNMENT PLEADER, HIGH COURT OF KERALA,  
PIN - 682031
- 3 THE DIRECTOR OF HEALTH SERVICES  
GENERAL HOSPITAL JN, THIRUVANANTHAPURAM, PIN - 695001
- 4 DEPUTY INSPECTOR GENERAL OF PRISONS (CENTRAL ZONE)  
OFFICE OF THE DIG CENTRAL ZONE - PRISONS RAMAVARMAPURAM,  
THRISSUR, KERALA, PIN - 680010
- 5 THE SUPERINTENDENT OF JAIL  
VIYYUR WOMEN'S JAIL AND CORRECTION HOME, VIYYUR,  
THRISSUR, PIN - 680010
- 6 THE SUPERINTENDENT  
MEDICAL COLLEGE HOSPITAL, MULANKUNNATHUKAVU, THRISSUR,  
PIN - 680581

SRI SUNIL K KURIAKOSE-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
15.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is not an Indian and concedes to be a Kenyan National, who travelled to India on the strength of Ext.P1 Passport. She admits that she has been arrayed as an accused in Crime No.44 of 2024 of the Panangad Police Station, under the provisions of the Passport Act and Foreigner's Act; and has produced Ext.P2 in substantiation.

2. She says that the only allegation against her is that she has over stayed in India without proper visa and that she has been incarcerated because her bail applications have been rejected by the Court of the competent Magistrate. She says that she became pregnant due to an "accident" and that she came to be aware of it only in February, 2024; and that she does not want to continue it any further. She



thus seeks the indulgence of this Court to terminate the pregnancy; and consequently, seeks a direction to respondents 2 to 6 to do so, within a time frame to be fixed by this Court.

3. Noticing the afore submissions of the petitioner, as made by her learned counsel - Sri.Aneesh.K.R. this Court had issued an order on 11.03.2024, when this matter was earlier listed, as under:

*"The learned Government Pleader submits that, since the petitioner is not an Indian, there are no protocols for the evaluation of her claim as made in this writ petition. He, however, submitted that, if this Court is so inclined, she can be assessed by a competent Medical Board, attached to the Medical College Hospital, Thrissur, the Superintendent of which is the 6<sup>th</sup> respondent.*

*2. Pending consideration whether the petitioner's request in this writ petition can be granted, I deem it*



*necessary that she be evaluated by a competent Medical Board to be constituted at the Medical College Hospital, Thrissur.*

*3. Resultantly, I direct the 6<sup>th</sup> respondent, to constitute a Medical Board; with a consequential direction to the 5<sup>th</sup> respondent to present the petitioner before it at 11 a.m. on 14.03.2024.*

*4. The report of the Medical Board shall be made available to this Court by the next posting date.*

*List for further consideration on 15.03.2024."*

4. Today, the learned Government Pleader has made available to the report of the Medical Board constituted as per the afore interim order, which reads as under:

#### MEDICAL BOARD REPORT

*As per the instruction from the Honorable tgh Court of Farala, Order 26/2004 Dated 11.03.2024) & Superintendent,*



GMCH, TO 02/04/2 Dated 12/03/2024, Medical board examination of St. Gwaro Margret Senin the Viyyur Women Jall in Crime No. 44 of 2024 of Panangad Police Station was done on 14/3/2024, 11.00 am at Govt. Medical College Hospital, Thrissur Patient was the following members.

Dr. Thanooja S - Associate Professor O & G

Dr. Babu K. Joseph - Assistant Professor  
Pediatrics

Dr. Shijin A Ummar - Assistant Professor,  
Psychiatry

Dr. Thahirabi K A - Assistant Professor,  
Radio Diagnosis

Dr. Sheeja Rajan T.M - Professor (CAP) &  
HOD, Plastic Surgery

Object To file a report before the Honorable High court of Kerala regarding the physical and mental status of Gwaro Margret Sebina, 30 years (UHID. T104962702241183)

Identification Mark-1) Black mole on left  
arm

2) Black mole behind  
neck.

Report by Gynecologist

Patient is Gravida 4 Para 212 Abortion 1  
vaginal delivery, 2 LSCS)

LMP given was 28/12/2023

050-5/3/2034 SUUG of CAL. 7.2 cm  
corresponding to 13 W3D FH, NT-1.8 cm.

As of above USG-FOG en 14/03/2024 is 34 WAD

Basic investigations were done are within  
normal limit P/A examination - Uterus  
corresponds to 14 Weeks of gestation other  
systems within normal limits

According to Abdominal USG on 5/3/2024  
done in the department of Radiodiagnosis it  
is reported that single live intra uterine  
Fetus of gestational age 13 Weeks 3 Days  
based on CRL

Pediatrics opinion:-

From the opinion of Obstetrics and  
Radiologist the age of the pregnancy is 14  
weeks. So pediatrician has not examined the  
patient as her age is 30 Years and the case  
of pregnancy is 14 weeks.

Mental Status Evaluation Report

Information was obtained from the  
patient herself. No past history of  
psychiatric illness. Now she complains of  
decreased sleep and appetite, worries



regarding current life situation. On mental status examination she was cooperative, well kempt and groomed, good rapport, eye contact made and sustained. Psychomotor activity was decreased. Talk was normal. No psychotic symptoms like delusion or hallucination were present. She expressed worries regarding currently being in jail and being pregnant. She does not wish to continue pregnancy. Feeling of helplessness present. No active suicidal ideas. Affect depressed, reactive and appropriate. Cognitive functions were intact.

Imp:- Adjustment disorder with depressive reaction secondary to current life situation.

Plastic surgery evaluation

According to the patient Mrs. Margret, 30 years a Kenyan national, she has undergone a procedure suggestive of Tummy tuck (Abdominoplasty) & Liposuction of abdomen & flanks under general anesthesia from a private hospital in Chandigarh, India in November 2023( As per court records, the year of surgery recorded as 2022). No operation notes or details of hospitalization are available. Patient is now requesting an MTP for 14 week gestation stating that her operating surgeon has



*advised her not to undergo pregnancy for 3 years. This is an unplanned pregnancy and she wants it terminated.*

*Opinion: There are no existing Clinical Practice guidelines about pregnancy following Abdominoplasty (Tummy tuck) or Liposuction procedures.*

*Most Plastic Surgeons of India advise patient to undergo abdominoplasty after completion of family. This is considering that a pregnancy after abdominoplasty can detrimentally affect the surgical results of this aesthetic procedure. The tight abdominal wall following abdominoplasty may not be conducive of the normal expansion of a gravid uterus and also lead to stretched scars. Considering the above factors, though there are no contraindications for pregnancy following a tummy tuck. It is advisable to delay pregnancy following a Tummy- Tuck procedure.*

### Conclusion

*1. She is a G4 P2 L2 A1 with current gestational age of 14 Weeks without any Obstetrics complications at present.*





2. She had undergone cosmetic abdominal surgical procedure in November 2023 as per her own statement, continuation of pregnancy can have detrimental effect on the surgical results of her tummy-tuck and lipo suction. This conclusion is as per the usual post operative advice given by most plastic surgeons, even though there are no existing clinical practice guidelines in this matter.

3. Her current mental health assessment shows that she has adjustment disorder with depressive reaction secondary to her current life situation."

5. The learned Government Pleader - Sri.Sunil Kumar Kuriakose, further submitted that since the pregnancy is only in the 14th week, he leaves to this Court to issue appropriate orders because, had the petitioner be an Indian, the Medical Termination of Pregnancy Act (MTP Act) allows her to choose the



termination on the recommendation of a single Registered Medical Practitioner.

6. I have considered the afore medical report and it is evident therefrom that, apart from the fact that the petitioner is not an Indian, nothing stands in the way of the seeking termination of her pregnancy.

7. Even going by the application of laws relating to human life and reproductive choices, a woman cannot be denied permission to terminate her pregnancy when she says that she does not want to continue it and when her pregnancy is within the limit as prescribed by the applicable statute - where she can make her own personal choice.

8. As said above, the termination of pregnancy at this stage only requires the recommendation of one Registered Medical



Practitioner; but, by way of abundant caution, this Court had called for a report from a Medical Board constituted of very competent doctors in the field of pediatrics, psychiatric, radio diagnosis, plastic surgery, obstetrics and gynecology.

9. Indubitably, therefore, there is hardly any reason why this Court should not come to the aid of the petitioner, particularly when she is incarcerated and facing the prospect of having to face trial, which would certainly put a great amount of burden on both her and the fetus.

In the afore circumstances, I allow this writ petition and allow the petitioner to terminate her pregnancy, however, only at the Government Medical College, Thrissur, to be overseen by its Medical Superintendent, adverting to all imperative and necessary



requirement.

Consequently, the 5<sup>th</sup> respondent - Superintendent of Viyur Women's Jail and Correction Home, will present the petitioner, following all due protocols, before the 6<sup>th</sup> respondent - Superintendent of the Medical College at 11 A.M on 21.03.2024; and the latter will then proceed to initiate necessary action, in terms of the afore directions.

Sd/-

DEVAN RAMACHANDRAN  
JUDGE

SAS



APPENDIX OF WP(C) 9016/2024

PETITIONER'S EXHIBITS:

- Exhibit P1 THE TRUE COPY OF THE KENYAN PASSPORT OF THE PETITIONER DATED 31.07.20217
- Exhibit P2 THE TRUE COPY OF THE FIR DATED 11.01.2024 IN CRIME NO 44 OF 2024 OF PANANGAD POLICE STATION
- Exhibit P3 THE TRUE COPY OF THE ORDER DATED 12.02.2024 IN CMP NO 501 OF 2024 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT 8 ERNAKULAM
- Exhibit P4 THE TRUE COPY OF THE ORDER DATED 29.02.2024 IN CRL MC NO 515/2024 OF THE PRINCIPAL DISTRICT COURT ERNAKULAM
- Exhibit P5 THE TRUE COPY OF THE REPRESENTATION DATED 24.02.2024 PREPARED BY THE LAWYER OF THE PETITIONER
- Exhibit6 THE SCREENSHOTS OF THE EMAIL DATED 29.02.2024 SEND TO RESPONDENTS NO 1, 3 AND 5 BY THE PETITIONER'S LAWYER