

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7541 of 2019

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PUNAM D/O HINCHLAL THAKUR THRO HINCHLAL RACHAV THAKUR

Versus

STATE OF GUJARAT

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Appearance:

RAFIK LOKHANDWALA(5590) for the Applicant(s) No. 1

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2,3,4

MS SHRUTI PATHAK, APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE S.H.VORA**

Date : 24/07/2019

ORAL ORDER

[1] With the consent of learned advocate for the applicant and learned APP, present application is taken up for final disposal, in view of short but serious issue involved in the petition.

[2] Present petition is preferred by the father of the victim girl aged 14 years and 3 months (date of birth 24.03.2005) under Article 226 of the Constitution of India read with the provisions of the Medical Termination of Pregnancy Act, 1971.

E-MAIL COPY

[3] On 22.07.2019, this Court passed the following order :-

*“**Notice** for final disposal returnable on 24.07.2019. Learned APP waives service of notice on behalf of the respondent – State.*

Meanwhile, let the victim minor – Ms. Punam d/o. Hinchlal Thakur be examined by the empaneled Doctors at Civil

Hospital, Surat. She should be admitted immediately and medical examination shall be carried out to let this Court know as to whether termination of pregnancy is medically feasible considering the fact that she is allegedly victim of rape and her guardian inclines to terminate her pregnancy. Doctors concerned shall follow settled guidelines to know her mental and psychological preparedness.

*Copy of this order be provided to learned APP forthwith. Direct service is permitted **today.**"*

[4] Pursuant to the order dated 22.07.2019, learned APP has received report of panel of three Doctors dated 23.07.2019, Department of Obstetrics and Gynecology, Government Medical College, Surat addressed to the Deputy Registrar of this Court. The said report is ordered to be taken on record. The victim girl viz. Punamben is examined by three panel of Doctors of Government Medical College, Surat viz. Dr. Minal Chaudhari, Dr. Kedar Trivedi and Dr. Fulguni Patel.

[5] Panel of Doctors in terms opined that continuation of pregnancy of 24 weeks would cause grave risk to mental and physical health of the victim and therefore, suggested that it is advisable to terminate the pregnancy as early as possible.

[6] This Court has heard both the sides and considered the opinion / report duly signed by Assistant Professors / Panel of Doctors, Department of Obstetrics and Gynecology, Government Medical College, Surat submitted by them through learned APP to the Deputy Registrar of this Court.

[7] Learned advocate for the petitioner submitted that the termination of pregnancy is permissible upto 20 weeks and at the time of examination by concerned Doctors on 23.07.2019, pregnancy of 24 to 26 weeks is noted.

[8] Learned APP has urged the Court that the Court may in given set of circumstances of case, issue direction for termination of pregnancy. However, the tissues from foetus may be directed to be handed over for the purpose of DNA sampling in scientific manner to the Investigating Officer.

[9] On hearing both the sides, this Court has noticed that the victim is alleged to have been abducted by the accused, named in the FIR being C.R.No.I-240 of 2019 registered with Khatodara Police Station for the offence punishable under sections 376(3) and 328 of IPC and under the sections 3, 4, 7 and 8 of Protection of Children from Sexual Offences Act, 2012.

[10] The victim is already carrying about 24 weeks of pregnancy with specific report / opinion of panel of Doctors that continuation of pregnancy would cause grave risk to her mental and physical health. No doubt, pregnancy exceeds 20 weeks, but considering the provisions of Section 5 of the Medical Termination of Pregnancy Act, 1971 and opinion of three registered Medical Practitioners, termination of pregnancy is immediately necessary to save mental and physical health of the victim.

[11] At this stage, the Court has considered the decision wherein 'the best interest' theory for the victim girl is settled

and considering her trauma, mental agony and possibility of social ostracism, the Court is of opinion that when the medical opinion issued by the Panel of Doctors is taken into consideration, let termination of pregnancy be carried out at the earliest with medical facilities available to the victim girl and on ensuring proper care in pre-termination and post termination period. The Doctors shall take necessary tissue samples from the DNA identification by following scientific practice for DNA identification and such samples shall be handed over to the Investigating Officer concerned.

[12] Intimation of this order shall be given to the Government Medical College, Surat forthwith by the learned APP. Copy of this order shall also be sent by the Registry to the Government Medical College, Surat.

[13] Since the pregnancy of victim exceeds 20 weeks as of now, the Court directs three senior most Gynecologists of Civil Hospital, Surat to examine the victim girl and also by psychologist attached to the Government Medical College, Surat. The said team of Doctors shall examine the victim Ms.Punamben and after having interaction with her, undertake the procedure of surgery on urgent basis along with other required expert Doctors like Physician, Anesthetic etc., if otherwise, there is unanimity amongst the Doctors to the effect that such termination would be carried out safely,

[14] Liberty is reserved in favour of the victim girl to apply for interim compensation before the Chairman, District Legal Services Authority, Surat and on such request being made by the victim in this regard, the concerned Chairman,

District Legal Services Authority after following prescribed procedure shall award interim compensation in accordance with law.

[15] With above directions, present petition stands disposed of.

Direct service **today** is permitted.

SATISH

(S.H.VORA, J)

