

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

276

CWP-25508-2022
Date of decision: 21.11.2022

MRS. XPetitioner

VERSUS

STATE OF HARYANA AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Ms. Rosi, Advocate
for the petitioner.
Mr. Vivek Chauhan, AAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

The instant writ petition has been filed invoking writ jurisdiction of this Court for issuance of a writ in the nature of Mandamus directing the respondents to terminate the pregnancy of victim "X" daughter of the petitioner in view of the provision of the Medical Termination of Pregnancy Act, 1971.

2. Learned counsel appearing on behalf of the petitioner contends that the minor victim 'X' has filed the instant petition through her natural guardian-her father. She contends that the petitioner was subjected to rape as a result whereof she got pregnant. An FIR No. 440 dated 21.10.2022 under Sections 363, 366-A, 376, 450 and 34 of the IPC and Section 4 and 17 of the Protection of Children from Sexual Offences, Act, 2012 has been registered at Police Station Punhana, District Nuh. She submits that the petitioner is a minor and continuation of the pregnancy will cause a great physical and psychological trauma

to the minor and further contends that she being dependent for her own self is not in a situation to take care of the child in case she is supposed to give birth. Learned counsel for the petitioner submits that since the pregnancy is more than 24 weeks old, the petitioner is bound to approach this Court for seeking termination of the pregnancy in accordance with the statutory mandate.

3. Vide order dated 09.11.2022, the petitioner was directed to appear before the Medical Board of the Shaheed Hasan Khan Mewati Govt. Medical College & Hospital, Mewat. A report from the Board of Directors was also called for in this regard.

4. Pursuant to the said order, the petitioner appeared before the Medical Board of the Shaheed Hasan Khan Mewati Govt. Medical College & Hospital, Mewat and subjected herself to the medical examination. A report of Board of Directors has been handed over to the Court today and the same is taken on record as Mark 'A'. The relevant extract of the said report as under:-

**Report of Board of Doctors on Victim "X" in CWP
No. 25508-2022 titled as Mrs. X versus State of Haryana
& Ors.**

In reference to letter No. SHKM/MS/2022/11303 dated 18/11/2022 issued by the Medical Superintendent Office, in compliance of the orders passed by the Hon'ble High Court on dated 18.11.2022, a Board of the Doctors was constituted to conduct the Medical Examination of the Victim "X" on dated 19.11.2022. During the medical examination of the Victim X, the following are the observations of the Board:

1. According to history patient's last menstrual period is not known.

2. On clinical examination Height of the uterus is corresponding to 26 weeks of gestation.
3. Patient's general condition and vital parameters are normal.
4. There is history of itching and evidence of skin lesions over both upper and lower extremities.
5. Hemoglobin is 11.9 gram% and other investigations are within normal limits.
6. Ultrasound done on 12/11/2022 there is single live intrauterine pregnancy of 24 weeks 2 days with no gross congenital anomalies.
7. Based on history and mental status examination, it is found that she is mentally fit at present to understand the nature of procedure & its consequences.

Medical Board on opinion that:-

- X is around 25 to 26 weeks pregnant.
- According to the MTP amendment Act, 2021. pregnancy can be terminated upto 24 weeks of gestation and above that period of gestation, it is at discretion of the Hon'ble Court.
- X is a minor (teenage pregnancy) considered high risk pregnancy and continuation of pregnancy may cause grave injury to her mental health.
- She is fit for termination of pregnancy.
- Termination of pregnancy around 25-26 weeks of gestation is associated with potential risk of medical and surgical complications as well as mental agony.

Submitted, pls.

(Dr. Sunder Pal Singh)
Associate Professor, Dept. Obst. & Gynae,
SHKM GMC, Nalhar, Nuh

(Dr. Rakhi Jain)
Associate Professor
Dept. of Paediatrics
SHKM GMC, Nalhar, Nuh

(Dr. Shipra Misra)
Associate Professor, Dept. Obst. & Gynae,
SHKM GMC, Nalhar, Nuh

(Dr. Naresh Kumar)
Radiologist, Civil Hospital
Mandikhera, Nuh.

(Dr. Vipin Kumar)
Assistant Professor, Deptt. Of Psychiatry
SHKM GMC, Nalhar, Nuh

5. She refers to provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 wherein pregnancies are permitted to be terminated by a Registered Medical Practitioner. Section 3 of the Medical Termination of Pregnancy Act, 1971 is extracted hereinafter below:-

“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) 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 4 [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.”

6. That the continuation of the said pregnancy is likely to cause great pain to the petitioner who is a minor and to her it will be a persistent reminder of the atrocity to which she had been subjected to. Furthermore, taking into consideration her tender age, it would also cause a great mental harm to the well being of the child. The anguish caused by the pregnancy is itself sufficient to constitute grave injury to the mental health of the petitioner and that it would rather be in the betterment and best interest of the unborn child as well as the petitioner that the pregnancy is permitted to be terminated. She further contends that the minor has held detailed deliberation with her father and they have voluntarily come to the conclusion that it would be in the larger interest of the petitioner that the pregnancy is terminated in accordance with the law.

7. I have heard the learned counsel(s) appearing on behalf of the respective parties.

8. The Hon'ble Supreme Court in the matter of "X versus Union of India" reported as (2020) 19 SCC 806, has while considering the case regarding medical termination of pregnancy of a 13 year old rape victim, held that:-

"3. Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of the pregnancy should be allowed".

9. It is not in dispute that the victim is a minor even as on date and is dependant on her family. She is yet to complete her education and pursue her goals in life. It can also not be lost sight of the fact that the pregnancy is an outcome of violation of the minor. It is a testimony to her bruised body and soul. The child, if born, is not a reminder of good memories, but shall be a reminder of trauma and agony she had to undergo. As an unwanted child, the member is also likely to either live a tormenting life filled up with taunts to his origin or only to be given away. In either of the said situation, the mother as well as the child suffer social stigma and incarceration for rest of their lives. The same is not in the best interest of either the mother and her family already having expressed their unwillingness to bring up the child, it may not even be advancing the cause of the unborn, who will grapple to come to terms with life and be subjected to maltreatment for no fault. Such decision are tough, however life is not just about being able to breathe-it is about being able to live with dignity. Where the

denial of dignity and social as well as family acceptance or approval is a writing on the wall, it compounds agony of the child and lead to greater injustice. Balance thus needs to be drawn to examine the over all well being. Whether to shape the trauma of a victim or to prolong it by delivery of the child, who is to be only victimized. The choices thus reduce and it seems more prudent to allow the termination of pregnancy.

10. There is also no reason for this Court to presume that the opinion given by the Medical Board concerned is not in good faith and as to how the continuation of this pregnancy would be in larger interest of the mother.

11. At this stage, the petitioner contends that Medical Board of the Shaheed Hasan Khan Mewati Govt. Medical College & Hospital, Mewat is a medical college which is nearer to the petitioner with a higher centrally equipped functional ICU and that the said Medical College may be directed to conduct the medical termination of the pregnancy in accordance with the law.

12. Resultantly, the Director of Medical Board of the Shaheed Hasan Khan Mewati Govt. Medical College & Hospital, Mewat is directed to take all appropriate and necessary steps needed to carry out the medical termination of the pregnancy of the petitioner upon satisfaction of all such necessary conditions as prescribed in law.

13. The petitioner shall approach the Medical College and/or the authorities of the said College on or before 25.11.2022 whereupon expeditious steps shall be taken for termination of the pregnancy in accordance with law.

14. The petitioner would be at liberty to espouse her financial status before the authorities concerned and be entitled to the benefit under the prevalent schemes in accordance with the rules.

15. A copy of this order be handed over to the learned counsel appearing on behalf of the respective parties under the signatures of the Bench Secretary.

Consequently, the present petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 21, 2022

Vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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