

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (MS) No. 3105 of 2022

'X' represented by her
father and natural guardian.

.....Petitioner.

Through: Ms. Snigdha Tiwari, Shri Abhijay Negi
and Shri Abhishek Rana, learned counsel for the
petitioner.

-Versus-

State of Uttarakhand
and others.

.....Respondents.

Through: Shri Suyash Pant, learned Standing
Counsel and Shri J.S. Virk, learned Deputy
Advocate General, for the State of Uttarakhand.

Date of Hearing & Order : 06.12.2022

Shri Sanjaya Kumar Mishra, J.

1. By filing this writ petition, a victim of sexual assault, aged about 13 years, has prayed for a direction, by issuing a writ of Mandamus, to Chief Medical Officer, Dehradun and Doon Medical Hospital, Dehradun through its Managing Director to terminate the pregnancy of the petitioner caused due to illegal act perpetuated upon her.

2. This writ petition has been filed through her father and natural guardian. He and victim girl appeared before this Court virtually. He has consented for medical termination of unwanted pregnancy, though a panel of doctors constituted by this Court as per order dated 05.12.2022, has stated that since termination of pregnancy at any stage entails various medical surgical complication including risk of operative delivery and anaesthetic complications and ICU admission and danger of life, so it can be attempted with complete informed consent.

3. It is not disputed at this stage that pregnancy of the victim girl, who is petitioner before us, has pregnancy of 25 weeks and 4 days. Sub section (2) of Section 3 of the Medical Termination of Pregnancy Act, 1971 provides for termination of pregnancy where the length of pregnancy exceeds 12 weeks but does not exceed 24 weeks can be done on the opinion of two registered medical practitioners.

4. In similar cases, several High Courts and Hon'ble Supreme Court have granted permission for termination of pregnancy even after completion of 24 weeks of pregnancy. We take note of the following cases:

i. In **X Vs. Union of India (2017) 3 SCC 458**, after 24 weeks of pregnancy as the pregnancy involves grave risk to the life of the petitioner and possible grave injury to her physical and mental health, medical termination was allowed by the Hon'ble Supreme Court.

ii. The Hon'ble Supreme Court, in **A. Vs. Union of India, (2018) 14 SCC 75**, has permitted termination in a case where the gestational age was 25-26 weeks, and in **Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339**, the Hon'ble Supreme Court permitted termination of the pregnancy when the gestational age was 26 weeks.

iii. In **Murugan Nayakkar v. Union of India, 2007 SCC OnLine SC 1092**, the Hon'ble Supreme Court has allowed medical termination of pregnancy beyond the statutory outer limit prescribed in the Act considering the fact that the victim was 13 years old

and in trauma, even though the Board stated that termination will have equal danger for the mother.

iv. In **Suchita Srivastava Versus Chandigarh Administration, (2009) 9 SCC 1** and in **Meera Santosh Pal v. Union of India, (2017) 3 SCC 462**, the Hon'ble Supreme Court held that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. In **Meera Santosh Pal (Supra)**, the pregnancy was into the 24th weeks. The Hon'ble Supreme Court permitted the petitioner to terminate the pregnancy and observed that the overriding consideration is that she has a right to take all such steps as necessary to preserve her own life against the avoidable danger to it.

5. This Court in the case of **X through her father Vs. State of Uttarakhand, 2022 SCC Online Utt 61** has allowed the termination of pregnancy of 25 weeks of 16 year old girl by the team of experts. The Delhi High Court, today, in a case reported in livelaw has allowed termination of pregnancy of 33 weeks of a 26 year old woman.

6. Having given our anxious consideration to the facts of the case, the different judgments of Hon'ble Supreme Court and High Courts, we are of the opinion that in this case, we should allow the Medical Board, which has already been constituted to proceed with medical termination of pregnancy of the victim girl, if there is no danger to the life of victim girl. The medical termination of pregnancy should be carried out under the guidance of Dr. Chitra Joshi, HOD, OBGY, GDMC, Dehradun and during the medical procedure, if they find any risk or danger to the life of the victim girl, then they have discretion to cancel

the procedure for medical termination of pregnancy. The reasons which persuaded us to pass the order of termination of pregnancy are conception by the petitioner is a result of offence of rape committed upon her by her close relative. The unwed mother (victim girl) is a minor and has to undergo the ignominy of an undesirable pregnancy. It will hamper her further physical and mental growth. It will also affect her future education prospects. The social stigma the victim girl will face will be insurmountable in this case, as the petitioner and his daughter belong to very humble walks of life. The social stigma the unborn child will face is also a matter of great concern to us as the child will definitely be viewed with disdain and will be looked down upon as an undesirable child by his / her peers in society.

7. Initially, the Medical Termination of Pregnancy Act, 1971 prescribes the limit of 20 weeks for medical termination of pregnancy. However, the Parliament passed an amendment Bill in 2020 and raised the period of pregnancy for termination from 20 weeks to 24 weeks keeping in view the advancements made in the field of medicines.

8. In this case, Medical Board constituted by us has informed the justification for the decisions - circumstances of pregnancy, age of victim girl, examination finding and risk intend with antimission of a teen age pregnancy, (pre-eclampsia, anemia, etc.) and danger to psyche and emotional health of the girl, it is recommended that we can go forward with the termination of the pregnancy. However, it has to be ensured that since termination of pregnancy at any stage entails various medical surgical complication including risk of operative delivery and anesthetic complications and ICU admission and danger of life, so it can be attempted with complete informed consent.

9. In that view of the matter, respondents are directed to proceed with termination of pregnancy as expeditiously as possible without any further delay. Before proceeding with the termination of pregnancy it shall be proper for the Medical Board to obtain declaration from the father of the victim girl that he has consented to terminate his daughter's pregnancy. It may be mentioned that victim and her father are connected virtually and have given their consent. They have in clear and unequivocal terms agreed for termination of pregnancy knowing the risk involved in it on being informed of it.

10. List this matter on 09.12.2022 awaiting intimation.

11. Let a certified free copy of this order be handed over to Shri Suyash Pant, learned Standing Counsel and Shri J.S. Virk, learned Deputy Advocate General for the State during the course of the day for early compliance.

(Sanjaya Kumar Mishra, J.)

(Grant urgent certified copy of this judgment, as per Rules)

SKS