

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
ON THE 14th OF AUGUST 2023
WRIT PETITION No.19410 of 2023**

Between:-

PROSECTRIX

.....PETITIONER

(BY SHRI MOHIT BHADOURIA – ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, DEPARTMENT
OF HEALTH, VALLABH BHAWAN, BHOPAL
(M.P.)**
- 2. CHIEF MEDICAL HEALTH OFFICER,
DISTRICT GWALIOR (M.P.)**
- 3. STATION HOUSE OFFICER, POLICE
STATION MADHOGANJ, DISTRICT**

GWALIOR (M.P.)

**(BY SHRI PAWAN SINGH RAGHUVANSHI –
GOVERNMENT ADVOCATE.**

*This petition coming on for admission this day, the court
passed the following:*

ORDER

1. By way of this writ petition under Article 226 of the Constitution of India, the petitioner is seeking following reliefs:

“i. That, the medical board may kindly be constituted to evaluate the physical and mental health status of the prosecutrix and after obtaining the report let the pregnancy of the prosecutrix be terminated while following the due process of law in the interest of justice.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner.”

2. It is the case of the petitioner that the prosecutrix aged about 16 years 8 months went missing, therefore, an FIR at Crime No.186 of 2023 for the offence punishable under Section 363, 366, 376 (3) of IPC and section 5/6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Madhoganj, District Gwalior has been lodged by the father of prosecutrix namely against the accused

Arun. During investigation, the father of the prosecutrix has filed a Habeas Corpus registered at Writ Petition No.11942 of 2023. The corpus was produced before the Court by the investigating agency and on dated 25/5.2023 this Court issued direction for the counselling. Thereafter the report dated 26.6.2023 was submitted before the Court. It reveals from the report that the corpus is pregnant, but she is only 16 ½ years of age. After counselling the prosecutrix in the open court expressed unwillingness to live with her father, therefore, she was sent to One Stop Centre. The parents of the prosecutrix went to One Stop Centre where daughter of the petitioner expressed her willingness to terminate the pregnancy as she was minor. Therefore, the petitioner who is father of minor girl had sought termination of the pregnancy of his minor daughter by filing the present petition.

3. On 7.8.2023 this Court had directed Government Advocate to verify whether the petition has been preferred at the behest of minor prosecutrix through her father who is kept in One Stop Centre, as in the habeas corpus petition W.P.No.11942 of 2023, preferred by the father of the minor prosecutrix wherein she had refused to go along with her father, therefore, she was directed to be kept in One Stop Centre, Gwalior. On 9.8.2023 the learned Government Advocate has produced the statement of prosecutrix which has

been recorded on 7.8.2023 by Chhama Rajoriya, S.I. Madhavganj, wherein she has stated that she has moved the present petition through her father. Thereafter vide order dated 9.8.2023 this Court had directed the Chief Medical and Health Officer, Gwalior to constitute a Medical Board including experts in the field concerned to medically examine the prosecutrix and to submit report as to whether the medical termination of pregnancy of minor daughter of the petitioner is possible or not.

4. Today, the report of the Medical Board dated 10.8.2023 been produced by the respondents in a sealed cover, which is opened in the open Court and taken on record. According to the said report, an ultrasound was conducted on the prosecutrix on 10.8.2023 and the prosecutrix was found carrying pregnancy of 18 weeks and 3 days. The report dated 10.8.2023 given by the Medical Board is reproduced as under:

“कार्यालय सिविल सर्जन सह मुख्य अस्पताल अधीक्षक, जिला ग्वालियर
क./मेडि.बोर्ड/2023 ग्वालियर दिनांक

मेडिकल बोर्ड रिपोर्ट दिनांक -10-08-2023

आज दिनांक 10-08-2023 को मान. उच्च न्यायालय खण्डपीठ ग्वालियर के प्रकरण क. डब्ल्यू पी. 19410/2023 में अपराध क. 186 में पीड़िता के नेचुरल गार्जियन विरुद्ध म.प्र. शासन एवं अन्य में पारित निर्णय दिनांक 09-08-2023 के परिपालन में पीड़िता के गर्भपात कराये जाने हेतु माननीय न्यायालय द्वारा अनुमति चाही है, उक्त क्रम में दिनांक 10-08-2023 को विशेष मेडिकल बोर्ड में वरिष्ठ विशेषज्ञों के समक्ष पीड़िता का परीक्षण किया गया जो निम्नानुसार है।

पहचान का चिन्ह:-

A Black mole on Rt. hand

| | |
|---------------------------------------|---------------------------------|
| घट बाइ:- | <u>Anu Gupta -1168 आरक्षक</u> |
| परीक्षण:- बोर्ड सर्वसम्मति के अनुसार- | Age of patient – About 17 years |
| स्थिति:- | Normal |
| हाईट/वजन:- | 150 c.m. /50 ka. |
| नाड़ी गति:- | 99 pulse |
| रक्त चाप:- | 120/64 bp |
| तापमान:- | 98'c |
| श्वसन तंत्र:- | Normal |
| हृदय/संचार तंत्र/सीवीएस:- | Normal |
| तंत्रिका तंत्र:- | Normal |
| पी/ए:- | 18&20 wks |
| पी/वी:- | OS closed No discharge |

Investigation-Blood Group A+Rt pos. HB/11.7 TLC 9.55 S.Billi ---
Blood urea Creatinine..... HIV NR HBSAG NR HCV NR VDRL
NA URINE R/M USG to day 18 wks -3 days -wt. 268

अभिमत:- उपरोक्त परीक्षणों के परिणामों के आधार पर बोर्ड सर्वसम्मति से इस निष्कर्ष पर पहुँचा है कि विशेषज्ञों के द्वारा सभी आवश्यक सावधानियों बरतते हुये यथा संभव शीघ्र पीड़िता का टर्मिनेशन ऑफ प्रेग्नेंसी टर्शरी सेन्टर पर (Medical College) स्तर से किया जाना उचित होगा।

डॉ रीना सक्सैना
स्त्री रोग विशेषज्ञ

डॉ सुभाष उपाध्याय
निश्चेतना विशेषज्ञ

डॉ एम.के. पाण्डे
रेडियोलॉजिस्ट

डॉ राजेश कुमार शर्मा
जिला मेडिकल बोर्ड

सिविल सर्जन सह मुख्य अस्प.अधीक्षक ग्वालियर”

5. This Court is dealing with the case of a girl aged about 16 ½ years, who is carrying a foetus of a rapist and the girl, as well as her parents does not want that she should give birth to the child of a rapist. Not only this, the child will also have social stigma throughout his life and the girl, who is about 17 years of age, has to deliver a child which will certainly be a life threat to the pregnant minor girl apart from social ostracization.

6. The Supreme Court in the case of **Murugan Nayakkar Vs. Union of India & Ors. in Writ Petition (Civil) No.749/2017** by order dated 6/9/2017 has held as under:-

"The petitioner who is a 13 years old girl and a victim of alleged rape and sexual abuse, has preferred this writ petition for termination of her pregnancy. When the matter was listed on 28.8.2017, this Court has directed constitution of a Medical Board at Sir J.J. Group of Hospitals, Mumbai. Be it noted, this Court had also mentioned the composition of the team of doctors. The petitioner has appeared before the Medical Board on 1.9.2017 and the Medical Board that has been constituted by the order of this Court expressed the opinion that the termination of pregnancy should be carried out. That apart, it has also been opined that termination of pregnancy at this stage or delivery at term will have equal risks to the mother. The Board has also expressed the view that the baby born will be preterm and will have its own

complications and would require Neonatal Intensive Care Unit (N.I.C.U.) admission.

We have heard Ms. Sneha Mukherjee, learned counsel appearing for the petitioner, Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

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 pregnancy should be allowed.

In view of the aforesaid premise, we direct the petitioner to remain present at the Sir J.J. Group of Hospitals, Mumbai in the evening of 7.9.2017 so that the termination of pregnancy can be carried out preferably on 8.9.2017. Mr. Nishant R. Katneshwarkar shall apprise the Dean of Sir J.J. Group of Hospitals, Mumbai so that he/she can make necessary arrangements for termination of the pregnancy.

A copy of the order passed today be handed over to learned counsel for the petitioner and Mr. Nishant R. Katneshwarkar, learned standing counsel for the State of Maharashtra.

The writ petition is accordingly disposed of. There shall be no order as to costs."

7. In light of the aforesaid judgment, considering the age of the girl, trauma which she has to suffer and the agony she is going through at present and also keeping in view the medical report submitted by the Medical Board, this Court is of the opinion that the prayer made by the petitioner and her daughter deserves to be allowed and is accordingly allowed.

8. Thus, this Court while passing the order has to keep in mind the report of Medical Board dated 10.8.2023, the future of a minor girl aged 16½ years, who is carrying a foetus of a rapist, the trauma she will have to face throughout her life while raising such child and not only this the child will also have to live his/her entire life with such social stigma.

9. In the present case girl (prosecutrix) being a minor is legally not in a position to decide anything for herself. Section 3 (1), 3 (2) (b) (i) and Section 5 (1) of the Medical Termination of Pregnancy Act, 1971 which 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)...

(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.

5. Section 3 and 4 when not to apply.-(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman."

10. Since there is risk to the life of the pregnant minor girl and of grave injury to her physical and mental health, this Court

is of the opinion that it cannot remain a silent spectator to the agony of minor undergoing torture and has to act and take a decision. In view of such facts, this Court directs that let an inter-disciplinary team of doctors be constituted by the Dean of G.R. Medical College, Gwalior and they shall carry out the necessary procedure of termination of pregnancy on **16th August, 2023 at 10:00 AM** when the girl (prosecutrix) and her parents shall appear before the team of the doctors and fill necessary consent forms. It is also directed that senior doctor of the Department of Medicine and senior doctor of the Department of Cardiology shall examine the health condition of the girl (prosecutrix) before termination of pregnancy of girl (prosecutrix). It is directed that Dean of G.R. Medical College, Gwalior shall constitute team of senior and experienced doctors for the sake of humanity.

11. It is further directed that in terms of the law laid down by Division Bench of Bombay High Court in the case of **Shaikh Ayesha Khatoon Vs. Union of India, reported in 2018 SCC OnLine Bom 11**, the petitioner and her daughter shall be sensitized by the Committee/Medical Board about the risk factors involved in the procedure and it would be open for the petitioner's daughter to undergo the procedure of medical termination of pregnancy at her own risk and consequences. It is further made clear that the doctors who have put their

opinions on record shall have the immunity in the event of occurrence of any litigation arising out of the instant procedure.

12. It is further clarified that identity of the girl shall be kept a secret and shall not be revealed to anybody. This is being done looking to the future of the girl. It is also directed that no legal claim can be put forth on the team of the doctors by the girl or her parents as they have understood the possible complications and the team of doctors will not be liable to any legal complications arising out of such procedure. It is further directed that relevant department in the G.R. Medical College or its associates may carry out DNA sampling of the foetus and preserve report of such DNA sampling to be produced before the competent Court where criminal case is pending.

13. With the aforesaid directions, this writ petition is allowed and disposed of.

14. Let a copy of the order be provided to learned Govt. Advocate free of cost for immediate transmission to the Dean, G.R. Medical College, Gwalior.

E-copy/Certified copy as per rules/directions.

(Milind Ramesh Phadke)
Judge

Pawar/-