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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-15049-2024

Judgment reserved on : 12.07.2024

Judgment pronounced on: 12.07.2024



.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present: - Mr. Shalender Mohan, Advocate
for the petitioner.

Mr. Suneel Ranga, DAG, Haryana.

VINOD S. BHARDWAJ, J.

1. The instant writ petition has been filed invoking writ jurisdiction of this Court for issuance of a writ in the nature of Certiorari for quashing the impugned Order dated 27.06.2024 (Annexure P-3) passed by respondent No.4-President, Medical Board for Pregnancy Termination, Civil Surgeon, Civil Hospital, Hisar.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner is major and residing at [REDACTED] with her family and he submits that the family of accused namely [REDACTED] [REDACTED] was also residing in the same house. The accused [REDACTED] forcibly raped the petitioner against her wishes due to which she was continuously under mental trauma and ultimately on 21.06.2024, she explained the incident to her family members upon which the FIR No. 52



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dated 21.06.2024 under Section 376 (2)(n), 452, 506 of the IPC and under Section 3(1)(w)(i) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) was registered at Women Police Station Hansi. The petitioner was, however, pregnant due to the offence committed on her and by the time she realized, pregnancy was beyond 24 weeks and as on 01.07.2024, the pregnancy of the petitioner was 25 weeks and 02 days. The petitioner approached the respondent No.3-Civil Surgeon/Chief Medical Officer, Civil Hospital, Hisar for seeking termination of pregnancy beyond 24 weeks but the concerned Medical Board denied the termination of pregnancy since the same was beyond the aforesaid period. Hence, the present writ petition.

3. Vide order dated 04.07.2024, this Court directed the petitioner to appear before the Civil Surgeon, Civil Hospital, Hisar on or before 08.07.2024 and a report from the Doctor/Medical Board was also called for in this regard.

4. In compliance to the order dated 08.07.2024, the Status report by way of affidavit of Dr. Sapna Gahlawat, Civil Surgeon/Chief Medical Officer, Civil Hospital, Hisar alongwith Annexure R-1 had been filed on behalf of respondents No.1 to 4 on 11.07.2024 which was taken on record. The relevant extract of the aforesaid medical report annexed as R-1 in the said Status Report is reproduced herein:-

5. Available reports and investigations:

| <i>Sr. No.</i> | <i>Report</i> | <i>Opinion on the findings</i> |
|----------------|---------------|--------------------------------|
| | | |



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| | | |
|----|---|---|
| 1. | USG REPORT DATED 25.06.2024 AT SDH, CIVIL HOSPITAL, HANSI | SINGLE LIVE INTRAUTERINE FETUS OF GESTATION AGE 24 WEEKS 5 DAYS \pm 2 WEEKS WITH NO FETAL ANOMALY DETECTED |
| 2. | USG REPORT DATED 06.07.2024 AT MAHARAJA AGRASEN DISTRICT CIVIL HOSPITAL, HISAR | SINGLE LIVE INTRAUTERINE FETUS OF GESTATION AGE 26 WEEKS 2 DAYS \pm 2 WEEKS, NO GROSS CONGENITAL MALFORMATION NOTED. |

6. Additional Investigations (if done):

| Sr. No. | Investigations done | Key findings |
|---------|---------------------|---|
| 1 | HB | 9.8 g/dL |
| 2 | BT/CT | 2'/20", 4'/30" |
| 3 | HIV | NON-REACTIVE |
| 4 | HBV/HCV | NEG. |
| 5 | WBC | 9000. |
| 6 | BLOOD GROUP | B+ |
| 7 | BLOOD SUGAR | 62 mg/dL |
| 8 | PLATELETS | 217000. |
| 9 | URINE COMPLETE | ALB AND SUG. NIL, ME PUSCELL 1-2, EPI CELL 0-1. |
| 10 | ECG | NORMAL |

7. Opinion by Medical board for termination of pregnancy: Ms. Axxxx D/o Sh. Umesh is physically and mentally fit to undergo Medical Termination of Pregnancy



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subject to permission by the Hon'ble Court. (Physical fitness to be reviewed by Anaesthetist before proceeding to MTP if Hon'ble High Court permits for the same).

Justification for the decision: *MTP act allows termination of pregnancy up to 24 weeks for (a) survivors of sexual assault or rape or incest, (b) minors, (c) change of marital status during the ongoing pregnancy (widowhood and divorce), (d) women with physical disabilities major disability as per criteria laid down under the rights of persons with disabilities act, 2016 (49 of 2016)];, (e) mentally ill women including mental retardation, (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped, and (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the government.] (see MTP Rules 2003; rule 3B).*

BEYOND 24 WEEKS OF GESTATION PERIOD: *Termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped. [see MTP Rules 2003; Rule 3A(a)(i)].*

OPINION BY PAEDIATRICIAN: - *There are chances of survival of baby but well- equipped neonatal ICU (nursery) is required.*

OPINION BY PHYSICIAN: - *General physical examination is normal. Chest, CVS, CNS-NAD. Mild anaemia (HB 9.8*



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g/dl.) Blood availability be kept in case of need during procedure. ECG is showing sinus tachycardia which is within normal limits.

OPINION OF PSYCHIATRIST FOR MENTAL HEALTH: - Client is currently mentally fit (current mental status examination normal).

OPINION BY GYNAECOLOGIST: Patient is short statured (less than 5 feet) hence comes under high-risk pregnancy criteria. Possibility of live birth of the foetus is there and even chances of failure of medical termination of pregnancy and may require hysterotomy (surgical procedure) and risks of complications related to delivery / surgical procedure also there.

[Emphasis supplied]

5. Learned Counsel appearing on behalf of the petitioner submits that petitioner has consulted and taken a second opinion regarding the said medical termination of pregnancy from a different medical institute and that the said medical institute has opined that there might be fair chances that if the termination is permitted then the foetus may not be born alive and no risk subsists to the life of the petitioner.

6. Responding the above, Counsel appearing on behalf of the respondent-State submits that as per the status report/medical opinion of the Medical Board, the possibility of live birth of the foetus is there and there are even chances of failure of medical termination of pregnancy. He states that further, the report mentions that the process may require hysterotomy (surgical procedure) and risks of complications related to delivery / surgical procedure are also there.



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7. No other argument has been raised.
8. I have heard the learned counsel(s) appearing on behalf of the respective parties and have gone through the documents appended with their able assistance.
9. The issue that arises for consideration is whether the petitioner should be granted permission for seeking termination of medical pregnancy under the current peculiar circumstances as noticed above.
10. For the purposes of consideration of the said aspect, it is necessary to extract the relevant statutory provisions of the Medical Termination of Pregnancy Act, 1971 and the MTP Rules of 2003 (hereinafter referred to as the Act of 1971 and the Rules of 2003 (as amended on 12.10.2021). The same are extracted as under:-

Section 3 of the Medical Termination of Pregnancy Act, 1971

“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 twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of



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woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1.--For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.--For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) *The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.*

(2B) *The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.*

(2C) *Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed*



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by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.]

(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 of the pregnant woman's actual or reasonably 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 ²[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."

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MTP Rules of 2003.

"3. Composition and tenure of district level Committee.-

(1) One member of the district level Committee shall be the Gynaecologist/Surgeon/Anaesthetist and other members from the local medical profession, non-governmental organisations, and Panchayati Raj Institution of the district Provided that one of the members of the Committee shall be a woman.

(2) Tenure of the Committee shall be for two calendar years and the tenure of the non-government members shall not be more than two terms.

3-A. Powers and functions of Medical Board.-For the



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purposes of Section 3,-

(a) the powers of the Medical Board shall be the following, namely-

(i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2-B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;

(ii) co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on the termination of pregnancy;

(b) the functions of the Medical Board shall be the following, namely –

(i) to examine the woman and her reports, who may approach for medical termination of pregnancy under sub-section (2-B) of Section 3;

(ii) provide the opinion of Medical Board in Form D with regard to the termination of pregnancy or rejection of request for termination within three days of receiving the request for medical termination of pregnancy under sub-section (2-B) of Section 3;

(iii) to ensure that the termination procedure, when advised by the Medical Board, is carried out with all safety precautions along with appropriate counselling within five days of the receipt of the request for medical termination of pregnancy under sub-section (2-B) of Section 3.

3-B. Women eligible for termination of pregnancy up to



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twenty-four weeks. The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely-

- (a) survivors of sexual assault or rape or incest;*
- (b) minors;*
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);*
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];*
- (e) mentally ill women including mental retardation;*
- (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and*
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”*

11. A perusal of the same shows that the pregnancy may be terminated by a registered medical practitioner subject to the provisions contained under the Act and the rules framed thereunder after obtaining opinion from the medical practitioners/medical board. Section 3 (2) entitles termination of the pregnancy where continuance thereof involves risk to the life of the pregnant woman or grave injury to her physical or mental health or that the child suffers from substantial risk of physical or mental abnormality. It further recognizes right of a woman to exercise a discretion where the pregnancy is an outcome of failure of contraceptive devices



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adopted or where such pregnancy is an outcome of rape or physical assault or under circumstances as elaborated in Rule 3 B of the Rules of 2003 as amended.

12. The Medical Termination of Pregnancy Act, 1971, was enacted to expand access of safe and legal abortion services to all women. It was perceived as an important step towards safety and well being of women. Prior to enunciation of the above said Act, there were numerous hurdles that stood in the way of women securing full access to safe and legal abortions thereby pushing women to avail discreet and unsafe abortions under deficient infrastructure facilities propelled by fear of social stigma. The problems compounded for pregnancies contracted on account of exercise of sexual autonomy outside or without marriage. The fear of social reprimand and harassment compelled the women to make choices which were violative of their right to reproductive autonomy. The law at present recognizes the autonomy of a person to determine as to whether she wants pregnancy or not.

13. The arguments advanced by the Counsel for the petitioner have been that the petitioner should have complete autonomy over her body and she should be free to elect whether she wants to continue with a pregnancy. It was also emphatically argued that the pregnancy is an outcome of rape and the child would live the trauma of unwanted child and would also mar the future prospects of the petitioner who is merely 21 years old and has an entire career ahead. The pregnancy being unwanted and an outcome of rape



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would be constant reminder of agony, humiliation and shame to the petitioner and even the child shall have to live a traumatized stigmatic life.

14. The arguments although reflect the social circumstances and outlook towards victim of rape and the child born out of it, however, the question as to whether termination of pregnancy is to be allowed or not has various dimensions. The crucial factors required to be kept in mind are the medical perspectives which take account of not only the health of the mother and the foetus but also the viability of the foetus to survive. The other aspects pertain to the legal aspects; the socio economic circumstances; the psychological impact as well as the ethical considerations.

15. In the background of the factual circumstances, the medical report as well as the relevant considerations noticed above, the medical report submitted by the Board attains significant importance. While being conscious of the demand for termination of the pregnancy, the Paediatrician has opined as to the chances of survival of the baby. The same opinion is also held by the Gynaecologist who has flagged fair possibility of live birth and failure of medical termination of pregnancy. She also reported that termination of pregnancy may require a surgical process increasing risks of complication related thereto. The Psychiatrist had not flagged any mental health issues and reported the petitioner to be mentally fit.

16. This Court is also cognizant of the fact that the petitioner approached this Court for the first time on 04.07.2024. The FIR had been got registered on 21.06.2024 and she was medically examined on 27.06.2024 when the Board noticed that she was pregnant by 24 weeks and 05 days +2



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weeks. The petition was filed one week thereafter. The Counsel sought for a fresh medical examination and Medical Board at Hisar (a place near to the house of the petitioner), which was got done and report obtained. Hence, as on the date, she is more than 26 weeks pregnant with +2 weeks.

However as she approached the Court with a pregnancy of 25 weeks + 5 days ± 2_ weeks, hence, the consideration is being done on the said basis alone.

17. Termination of pregnancy beyond 25 weeks is complete and the foetus has a relatively very high chance of survival outside the womb with appropriate medical care. A data search and assistance from online portals, undertaken by this Court, indicates a survival rate around 50-70%. The response sought about procedure for medical termination suggests that use of feticide methods such as injection of 'digorin' or 'potassim chloride' is done to stop the fetal heart beat before the termination process and to disseminate chances of foetus being born alive.

18. In such circumstances, when the possibility of the foetus being delivered alive and chances of survival being between 50-70%, the Court would require to be aware of the physical and neurological effect which such a procedure may have on the foetus, if delivered alive. The risks become immense and the child may have to live a crippled or a dependent life due to challenges to mental and physical growth, all for no fault of the child unborn.

19. While the Court cannot undo the wrong already committed against the petitioner and can only take restorative measures, it can strike a



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balance for the apprehensions and the challenges expressed by issuing appropriate directions.

20. The medical report received is against the termination of pregnancy and the Medical Board has opined that it is not in the welfare of the foetus, which may nonetheless be born alive on account of its advance stage. The opinion of the Gynecologist also indicates that the patient is short statured (less than 5 feet) and hence, comes under the high risk pregnancy criteria. Possibility of live birth of the foetus in the process of medical termination of pregnancy exists and the medical termination of pregnancy may require hysterotomy (Surgical procedure) incurring risks and complications related to delivery/surgical procedure.

21. Under similar circumstances, in the case of “X versus Union of India and another” reported as 2023 INSC 919, a three Judge Bench of the Hon’ble Supreme Court denied the medical termination of pregnancy on the following facts:-

“24. As noticed above, the length of the pregnancy has crossed twenty-four weeks. It is now approximately twenty-six weeks and five days. A medical termination of the pregnancy cannot be permitted for the following reasons:

a. Having crossed the statutory limit of twenty-four weeks, the requirements in either of Section 3(2B) or Section 5 must be met;

b. There are no "substantial foetal abnormalities" diagnosed by a Medical Board in this case, in terms of Section 3(2B). This Court called for a second medical report from AIIMS to ensure that



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the facts of the case were accurately placed before it and no foetal abnormality was detected; and

C. Neither of the two reports submitted by the Medical Boards indicates that a termination is immediately necessary to save the life of the petitioner, in terms of Section 5.”

22. This Court had also declined permission for medical termination of pregnancy due to advanced stage of pregnancy and possibility of the child being born alive in the matter of '**X' versus State of Punjab**', bearing CWP No. 4885-2024 decide vide judgment dated 11.03.2024 where the factual difference was only on account of change of status instead of rape.

23. I am hence of the opinion that the circumstances surrounding the case do not give rise to compulsive and convincing reasons where pregnancy must be terminated. The Medical Board has already opined in the negative and with the passage of time and delay on the part of the petitioner in approaching this Court, it has only further aggravated the cause against feticide. There is no material available on record with this Court on the basis whereof this Court may differ with the opinion expressed by the medical report. A specific question was also posed to the Counsel if the petitioner intended to keep the child or not, to which the answer is in the negative.

24. However, the learned Counsel appearing on behalf of the petitioner, pleads for another opinion in relation to the medical termination of pregnancy of the petitioner. This Court thus permits the petitioner to appear before Medical Board of the Postgraduate Institute of Medical



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Education and Research (PGIMER), Chandigarh, if she so wishes, whereupon her medical re-examination be conducted by the Doctor/Board of Doctors as required under the Medical Termination of Pregnancy Act, 1971.

25. In the event of the petitioner appearing before the said Medical Board and its opinion affirming the subsisting risks and complications as indicated by status report filed in this Court having chances of live delivery or requiring feticide, the medical termination of pregnancy of the petitioner shall not be undertaken. On the other hand, if the Medical Board of the PGI opines in favour of medical termination of pregnancy, then the requisite procedure of termination of pregnancy may be carried out in accordance with law.

26. The present writ petition is hence disposed of with the aforesaid directions. It is further directed that if the termination of the pregnancy is not carried out then in the larger interest of the petitioner as well as the minor unborn child, it is directed as under:-

- i) The Medical Board of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh or the Civil Hospital, Hisar, as the petitioner may opt, is directed to ensure that all necessary medical facilities are made available to the petitioner, without the payment of fee, charges or expenses of any nature and to ensure that the delivery takes place in a safe environment.



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- ii) The privacy of the petitioner shall be maintained at all stages and identity of the petitioner be not divulged in the course of hospitalization and treatment.
- iii) The child, on birth, may be handed over to the Child Welfare Committee of District Hisar, if the petitioner does not intend to keep the child, and the petitioner shall fulfill all such necessary documentation and formalities as may be so required in law for handing over custody of the said child to the Child Welfare Committee.
- iv) The said Child Welfare Committee, Hisar shall take care of all needs and facilities of the child.
- v) The petitioner would, in such circumstances, convey her no objection to the said child to be given in adoption by the State agency to the willing parents, in accordance with law. Permission is also granted for giving the child in adoption to the willing prospective parents, in accordance with law.
- vi) The above said directions are without prejudice to any other rights and entitlement of the petitioner under applicable policies/guidelines for financial assistance/rehabilitation.

The petition is accordingly disposed of.

JULY 12, 2024*Vishal Sharma***(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No