

: 1 :

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 05TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

WRIT PETITION No.100875/2022 (GM-RES)

BETWEEN

KUMARI M. (NAME OF THE PETITIONER IW WITHHELD)
BY HER FATHER.

NOTE: THE PETITIONER BEING MINOR AND THIS MATTER
PERTAINS TO POCSO ACT AND MTP IS PRAYED THE NAME OF THE
PETITIONER IS NOT DISCLOSED IN ORDER TO MAINTAIN DIGNITY
AND PRIVACY OF THE MINOR VICTIM AND HER FAMILY.

... PETITIONER

(BY SHRI. SHARAD V. MAGADUM , ADVOCATE)

AND

1. THE STATE OF KARNATAKA,
REPRESENTED BY SECRETARY DEPARTMENT OF
HEALTH, M.S.BUILDING,
BENGALURU-560001.
2. THE DISTRICT HEALTH SURGEON,
DISTRICT CIVIL HOSPITAL,
CHANNAMMA CIRCLE, BELAGAVI,
DIST. BELAGAVI-590001

... RESPONDENTS

(BY SRI. SHIVAPRABHU HIREMATH, AGA FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN
THE NATURE OF MANDAMUS DIRECTING THE RESPONDENT NO.2
TO MEDICALLY TERMINATE THE PREGNANCY OF THE PETITIONER
MINOR VICTIM FORTHWITH.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court, seeking for the following reliefs:

(i) Issue writ in the nature of Mandamus directing the respondent No.2 to Medically terminate the pregnancy of petitioner minor Victim forthwith.

(ii) Issue any other writ or directions as deem fit by this Hon'ble Court in the interest of justice and equity.

2. The petitioner being minor, represented by her father. The petitioner is a victim of an offence under Sections 4 & 6 of Protection of Children from Sexual Offences Act, 2012 read with Sections 363, 366-A, 376(2)(n) and 506 of the IPC.

3. On account of the said offence, the petitioner minor girl conceived and is now pregnant for 22 weeks.

4. In view of the petition being filed, vide order dated 03.03.2022, the matter was referred to the Medical Board constituted under Section 3(2)(a) of the Medical Termination of Pregnancy Act, 1971. Thereafter, the Medical Board has examined the petitioner and submitted a report dated 05.03.2022. Though certain complications have been stated in the said report, the report also mentions that if the procedure is not carried out, it may effect the mental health of the petitioner and if pregnancy is continued, it may cause serious/grave injury to the mother both physically and mentally, as it is a high risk pregnancy. It is further submitted that, if the petitioner were to continue her pregnancy she can develop anxiety, which could lead to depression effecting her mental health. The Board has opined that the petitioner needs termination of pregnancy, despite the risk which has been stated in the said report.

5. Section 3 of the Medical Termination of Pregnancy

Act, 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) 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 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 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."

6. In terms of Section 3(2)(b), where the length of the pregnancy exceeds 12 weeks, but does not exceed 24 weeks, if two registered Medical Practitioners are of the opinion that, the continuation of the pregnancy would involve risk to the life of the pregnant woman or a grave injury to her physical and mental health, a medical termination of pregnancy could be resorted to.
7. In the present case, the pregnancy is 22 weeks 03 days. It is in pursuance of the same, the petitioner has approached this Court seeking for permission

for termination of the pregnancy caused on account of a sexual offence committed on her.

8. The pregnancy in the present case is 22 weeks 3 days, which is within the prescribed period of 24 weeks under Section 3(2)(b) of the Act. The Medical Board has opined that the pregnancy could be terminated despite the risk.
9. In view thereof, I am of the opinion that, it would be in the interest of the petitioner-victim, that the pregnancy is terminated. Hence, I pass the following:

ORDER

(i) The petition is allowed.

(ii) A mandamus is issued directing respondent No.2 to medically terminate the pregnancy of the petitioner by adopting all required safety considerations for such a procedure.

(iii) A DNA sample of the fetus shall be immediately sent to the Forensic Science Laboratory, Bengaluru for providing a DNA report so as to enable the comparison with the DNA of the accused, as and when required.

(iv) The fetus shall be preserved in such a manner as to able to obtain a DNA sample for future examinations.

(v) The fetus shall be preserved until the culmination of the trial in Crime No.179/2021, registered by the Belagavi Rural Police.

**Sd/-
JUDGE**

*Svh/-