

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Thursday, the 21<sup>st</sup> day of July 2022 / 30th Ashadha, 1944

WP(C) NO. 23092 OF 2022(J)

PETITIONER:

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RESPONDENTS:

1. UNION OF INDIA REPRESENTED BY SECRETARY, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SASTHRI BHAVAN , NEWDELHI, PIN - 110001.
2. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
3. DIRECTOR OF MEDICAL EDUCATION, MEDICAL COLLEGE P.O, MEDICAL COLLEGE, KUMARAPURAM ROAD, CHALAKKUZHI, THIRUVANANTHAPURAM, PIN - 695011
4. STATION HOUSE OFFICER AYIROOR POLICE STATION, THIRUVANANTHAPURAM RURAL THIRUVANANTHAPURAM DISTRICT, PIN - 695310.
5. SAT HOSPITAL REP BY SUPERINTENDENT GOVT. MEDICAL COLLEGE, KUMARAPURAM P.O. THIRUVANANTHAPURAM DISTRICT, PIN - 695011
6. THE HOME MANAGER INTEGRATED CHILD CARE HOME, NETTAYAM P.O, THIRUVANANTHAPURAM, PIN - 695013.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 5th respondent to constitute a Medical Board of competent Medical Practitioners to examine the stage of pregnancy of the Petitioner's Minor daughter and file a Report before this Hon'ble Court forthwith during the pendency of this Writ Petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 15/7/2022 and upon hearing the arguments of SMT. SHAMEENA SALAHUDHEEN, Advocate for the petitioner and of SRI. S. MANU, ASSISTANT SOLICITOR GENERAL OF INDIA for respondent 1, the court passed the following:

P.T.O.

**V.G.ARUN, J.**

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**W.P. (C) No.23092 of 2022**

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**Dated this the 21<sup>st</sup> day of July, 2022**

**ORDER**

The petitioner's daughter, a minor girl aged 13 years, is pregnant by 30 weeks. The incredulous but harsh truth is that the girl is impregnated by her sibling, who is also a minor. The physical strain of carrying a pregnancy at such a young age and the psychological impact and consequent mental stress are projected as reasons for seeking this Court's intervention and a direction to terminate the pregnancy medically. A perusal of available records reveals that the young girl was not even aware of her pregnancy, which fact came to light only when the petitioner took the girl to a doctor when she complained of abdominal pain and of having missed her periods for more than two months. Physical examination,

followed by a laboratory test, revealed that the girl was pregnant by 30 weeks. Immediately, the girl, represented by her hapless mother, rushed to this Court.

2. When the writ petition came up for admission, it was directed to constitute a Medical Board for examining the victim girl. Responding with promptitude, the 5th respondent constituted the Medical Board and has made available the Medical Board's report. The relevant portion of the Medical Board's opinion is as follows;

**"Medical Board Opinion**

**Neonatology Opinion**

*As per the USS done on 16.07.2022, 31 weeks 2 days, estimated fetal weight is 1.716 kg, if terminated at 31 weeks there is a 60-70% chance of survival of the baby if born alive. There is increased risk of morbidity like respiratory distress, necrotizing enterocolitis and other complications for the preterm baby. The baby*

may require 4-6 weeks of NICU and hospital care. There is also risk of adverse neuro developmental outcome. We are ethically and medico legally bound to give full medical attention to the new born infant. We also recommend antenatal steroids to the mother for fetal lung maturity. Considering this neonatal salvageability termination may be decided by the Hon'ble court.

**Gynaecology Opinion**

Having examined the 13 yr old victim found her in good general condition, oriented with stable vitals, obstetric examination revealed 30 weeks of gestation which corresponds to the ultrasound findings. As per the ultrasound on 16.07.2022 SLIUG, 31 weeks 2 days, cephalic presentation, estimated fetal weight, 1.716 g+ or - 254 gm, AFI 11, doppler normal. The decision for termination may be taken by the Hon'ble Court and we will comply with the decision thereof.

**Psychiatry Opinion**

Preliminary valuation found child to be in psychological distress. Hence reviewed in psychiatry Op on 18.07.2022 and found to have? Border line intelligence, formal assessment pending. Anxiety symptoms present. There is improvement in mood and sleep. She needs

*continued psychological support."*

3. Adv. Shameena Salahudheen, learned Counsel for the petitioner, submitted that this Court should consider the physical strain and mental stress being suffered by the young girl and the possible social ostracisation that the girl and her family will have to face. Reliance is placed on the Division Bench decision of this Court in **ABC v. Union of India [2020 (4) KLT 279]** and that of a learned Single Judge in W.P.(C) No.7503 of 2022 to contend that under identical circumstances, this court had granted the permission sought for.

4. Adv.S.Appu, learned Government Pleader submitted that, under the Medical Termination of Pregnancy Act, 1971 ('the Act' for short), the maximum permissible gestational period is 24 weeks. In the instant case, the pregnancy has

crossed 30 weeks. Being so, the findings of the Medical Board assume relevance. Reference is made to Section 3 (1) (2-B) of the Act to point out that there can be an exemption from the maximum time limit prescribed under the Act only in cases where the termination is necessitated by the diagnosis of any substantial, foetal abnormality by a Medical Board.

5. The law on medical termination of pregnancy is governed by the Medical Termination of Pregnancy Act, 1971. Sections 3, 4 and 5 being contextually relevant are extracted hereunder;

**"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.*

*(2-A) 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.*

*(2-B) 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.*

*(2-C) 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.*

*(2-D) 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 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 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."

Careful scrutiny of Section 3, with particular reference to sub-section 2 and Explanation I thereunder shows that medical termination of pregnancy can be permitted up to 24 weeks, if

continuance of the pregnancy would involve risk to the life of the pregnant woman or grave injury to her physical or mental health. Going by Explanation II, in a case in which pregnancy is alleged 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. In this context, it may also be appropriate to read Rule 3B of the Medical Termination of Pregnancy Rules, 2003. Under Rule 3B, specific categories of women are to be considered eligible for termination of pregnancy under Clause (b) of sub-section (2) of Section 3 of the Act. This category of women includes survivors of sexual assault or rape, or incest, as also minors. In the case at hand, the victim is a rape survivor, is a minor and incest is also involved. Hence, taking a cue from the above

provisions, I lean in favour of the victim while being conscious of the rights of the unborn baby. It is pertinent to note that a woman's right to make reproductive choices is recognised as part of her personal liberty under Article 21, subject of course to reasonable restrictions. The Division Bench has considered these aspects in **ABC v. Union of India [2020 (4) KLT 279]** while granting permission for medical termination to a minor girl whose pregnancy had progressed to the 24th week. A similar view was taken by a learned Single Judge in W.P.(C) No.7503 of 2022, wherein the pregnancy had crossed 26 weeks. The Apex Court in **X v. Union of India and others [(2020) 19 SCC 806]**, wherein also, the pregnancy was permitted to be terminated considering the age of the victim girl, which, incidentally, was also 13 years. The Apex Court considered the trauma the

girl had suffered because of the sexual abuse and the agony she was going through and the medical board's report. This Court also had occasion to consider the case of a 15 year old victim girl. The pregnancy in that case, which had crossed 24 weeks, was permitted to be terminated after considering all relevant aspects. Here also, on consideration of the physical difficulties, mental agony and opinion of the Medical Board, I am inclined to allow the prayer for medical termination of the pregnancy.

6. Before parting with the case, I am compelled to express concern at the increasing number of child pregnancies, in which, at least some cases involve close relatives. In my opinion, it is time for the authorities to take a re-look at the sexual education being imparted in our schools. The easy availability of porn on the

internet can mislead the juvenile mind of youngsters and give them wrong ideas. Educating our children about the safe use of the internet and social media is absolutely essential. I am informed that my learned Brother Justice Bechu Kurian Thomas is considering this issue in B.A.No.3273 of 2022, and intends to issue directions for ensuring better awareness of the statutes concerned. The learned Judge has also noted that the educational machinery of the State has fallen woefully short in imparting the required awareness to young children about the consequence of sexual overtures.

Considering that each days delay will add to the victim's agony, and being of opinion that the above directions would ensure that the baby, if born alive, is not abandoned at birth, the following directions are issued;

(i) The petitioner is permitted to get the victim girl's pregnancy terminated at a Government Hospital.

(ii) On production of this order the Superintendent of the hospital shall take immediate measures for constituting a medical team for conducting the procedure.

(iii) The petitioner shall file an appropriate undertaking, authorising to conduct the surgery at her risk.

(iv) If the baby is alive at birth, the hospital shall ensure that the baby is offered the best medical treatment available, so that it develops into a healthy child;

(v) If the petitioner is not willing to assume the responsibility of the baby, the State and its agencies shall assume full responsibility and offer medical support and facilities to the

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child, as may be reasonably feasible, keeping in mind the best interests of the child and the statutory provisions in the Juvenile Justice (Care and Protection of Children) Act, 2015.

Post along with W.P.(C) No.22652 of 2022.

Sd/-

**V . G . ARUN  
JUDGE**



Sc1/21.07.22