

(2019) 12 GUJ CK 0050
In the Gujarat High Court

Case No : R/Special Criminal Application No. 10365 Of 2019

Ashaben

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 376
Medical Termination Of Pregnancy Act, 1971 — Section 5
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 4

Citation : (2019) 12 GUJ CK 0050

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Urmila N. Desai, Krina Calla

Final Decision : Disposed Of

Judgement

S.H. Vora, J

1 . With the consent of learned advocate for the applicant and learned APP, present application is taken up for final disposal, in view of short but serious issue involved in the petition.

2 . Present petition is preferred by the victim minor girl though Administrator, Children Home for Girls, Bharuch under Article 226 of the Constitution of India read with the provisions of the Medical Termination of Pregnancy Act, 1971.

3. On 05.12.2019, this Court passed the following order:-"Leave to amend.

Notice returnable on 09.12.2019. Learned APP waives service of notice on behalf of the respondent-State.

Meanwhile, let the victim minor-Ashaben D/o. Naginbhai Valjibhai Tadvi be examined by the empaneled Doctors at SSG Hospital, Vadodara. She should be admitted immediately and medical examination shall be carried out to let this

Court know as to whether termination of pregnancy is medically feasible considering the fact that she is allegedly victim of rape and her guardian inclines to terminate her pregnancy. Doctors concerned shall follow settled guidelines to know her mental and psychological preparedness.

Copy of this order be provided to learned APP forthwith. Direct service is permitted today."

4. Thereafter, on 09.12.2019, this Court has passed following order:-

"1. The Report furnished by the Associate/Assistant Professor, Dept. of OBST, & GYNEC, Medical College & S.S.G. Hospital, Baroda is ordered to be taken on record.

2. The Court is not satisfied with such report placed on record.

3 . Therefore, let victim girl-Ms. Ashaben be examined by the empaneled Doctors at Civil Hospital, Ahmedabad. She should be admitted immediately and medical examination shall be carried out to let this Court know as to whether termination of pregnancy is medically feasible considering the fact that she is allegedly victim of rape and her guardian inclines to terminate her pregnancy. Doctors concerned shall follow settled guidelines to know her mental and psychological preparedness for the same.

4. Copy of this order be provided to learned A.P.P. forthwith. S.O. to 11.12.2019. Direct service today is permitted.

To be listed on the top of the Board"

5. Pursuant to the order dated 09.12.2019, learned APP has received report of panel of Doctors dated 12.12.2019, Civil Hospital, Ahmedabad. The said report is ordered to be taken on record. The victim girl viz. Ms. Ashaben D/o. Naginbhai Valjibhai Tadvai is examined by four panel of Doctors of Civil Hospital, Ahmedabad viz. Dr. A.U. Mehta, Dr. Rabiya Shakir, Dr. Khushi Patel and Dr. Minaxiben Parikh.

6. Panel of Doctors in terms opined as under:-

(1) She is carrying normal pregnancy of 13 weeks and 4 days as on 10/12/19 with uncomplicated sickle cell disease (Hereditary Hematological condition) without anemia.

(2) She does not have any complication of sickle cell disease or crises and all organ systems are within normal functional status currently. She has been evaluated by Hematologist (GCRI).

(3) The patient/guardian is explained about the risk of sickle cell crises and complications wrt to continuation of pregnancy vis-a-vis termination of pregnancy which are same of mild to moderate nature. She/guardian has been explained about need for transfusion and eventuality of surgical intervention if incomplete abortion occur. She understands the follow up treatment by hematologist in future. Her blood group is AB Negative.

- (4) We have adequate medial and laboratory back up in case of an adverse event.
- (5) After due consultation with guardian/patient both have wished/consented for medical termination of pregnancy as per the provisions of MTP Act. (Permissible upto 20 weeks).
- (6) Psychological evaluation: On clinical examination patient can follow commands. Her performance on Bhatia Test average IQ which shows that her maturity level and her understanding level is appropriate to her age.
- (7) Psychiatry evaluation: On the basis of detailed history, mental status examination and psychological evaluation patient has average intellectual level and maturity level and understanding is appropriate to her age. Patient has no major behaviour/thought/mood/perceptual disturbance at present.
- (8) We plan to terminate her pregnancy as soon as the permission is granted from Your Lordship with concurrent sample collection of DNA test of the abortus for the prosecution. Hence, kindly give permission and oblige.]
- (9) We intend to keep the patient indoor till then if permitted.

7. This Court has heard both the sides and considered the opinion/report duly signed by four panel of Doctors, Civil Hospital, Ahmedabad submitted by them through learned APP to this Court.

8. Learned advocate for the petitioner submitted that the termination of pregnancy is permissible upto 20 weeks and at the time of examination by concerned Doctors on 12. 12.2019, pregnancy of 13 weeks 4 days is noted.

9. Learned APP has urged the Court that the Court may in given set of circumstances of case, issue direction for termination of pregnancy. However, the tissues from foetus may be directed to be handed over for the purpose of DNA sampling in scientific manner to the Investigating Officer.

10. On hearing both the sides, this Court has noticed that the victim is alleged to have been abducted by the accused, named in the FIR being C.R. No. I-42 of 2019 registered with Garudeshwar Police Station for the offence punishable under section 376 of IPC and under section 4 of the POCSO Act.

11. The victim is already carrying about 13 weeks 4 days of pregnancy with specific report/opinion of panel of Doctors that the victim is carrying normal pregnancy of 13 weeks and 4 days as on 10/12/19 with uncomplicated sickle cell disease (Hereditary Hematological condition) without anemia, she does not have any complication of sickle cell disease or crises and all organ systems are within normal functional status currently. She has been evaluated by Hematologist (GCRI), the patient/guardian is explained about the risk of sickle cell crises and complications wrt to continuation of pregnancy vis-a-vis termination of pregnancy which are same of mild to moderate nature. She/guardian has been explained about need for transfusion and eventuality of surgical intervention if incomplete abortion occur, the victim understands the follow up treatment by

hematologist in future. Her blood group is AB Negative and after due consultation with guardian/patient both have wished/consented for medical termination of pregnancy as per the provisions of MTP Act. (Permissible upto 20 weeks).

12 . No doubt, pregnancy is below 20 weeks, but considering the provisions of Section 5 of the Medical Termination of Pregnancy Act, 1971 and opinion of four registered Medical Practitioners, termination of pregnancy is immediately necessary to save mental and physical health of the victim.

13. At this stage, the Court has considered the decision wherein 'the best interest' theory for the victim girl is settled and considering her trauma, mental agony and possibility of social ostracism, the Court is of opinion that when the medical opinion issued by the Panel of Doctors is taken into consideration, let termination of pregnancy be carried out at the earliest with medical facilities available to the victim girl and on ensuring proper care in pre-termination and post termination period. The Doctors shall take necessary tissue samples from the DNA identification by following scientific practice for DNA identification and such samples shall be handed over to the Investigating Officer concerned.

14 . Intimation of this order shall be given to the four panel of Doctors, Civil Hospital, Ahmedabad forthwith by the learned APP. Copy of this order shall also be sent by the Registry to the Civil Hospital, Ahmedabad.

15. Since the pregnancy of victim is below 20 weeks as of now, the Court directs three senior most Gynecologists of Civil Hospital, Ahmedabad to examine the victim girl and also by psychologist attached to the Government Medical College, Ahmedabad. The said team of Doctors shall examine the victim girl Ms. Ashaben d/o. Naginbhai Valjibhai Tadvī and after having interaction with her, undertake the procedure of surgery on urgent basis along with other required expert Doctors like Physician, Anesthetic etc., if otherwise, there is unanimity amongst the Doctors to the effect that such termination would be carried out safely,

16 . Liberty is reserved in favour of the petitioner-victim girl to apply for interim compensation before the Chairman, District Legal Services Authority, Bharuch and on such request being made by the victim in this regard, the concerned Chairman, District Legal Services Authority after following prescribed procedure shall award interim compensation in accordance with law.

17. With above directions, present petition stands disposed of. Direct service today is permitted.