

(2024) 05 MP CK 0053

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11778 Of 2024

Prosecutrix Of Crime

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 13-05-2024

Acts Referred:

Indian Penal Code, 1860 — Section 363, 376

Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4, 5, 6

Citation : (2024) 05 MP CK 0053

Hon'ble Judges : Vinay Saraf, J

Bench : Single Bench

Advocate : ??Ravi Ballabh Tripathi, Shailendra Singh Kushwah

Final Decision : Disposed Of

Judgement

Vinay Saraf, J

1. Present petition is being filed by the petitioner through her mother, as the petitioner is minor seeking direction from this Court to get her pregnancy terminated. Petitioner is a rape victim.

2. It is stated in the petition that on 29.03.2024 an F.I.R. was lodged at Police Station Jhansi Road, District Gwalior registered as Crime No.128/2024 under Section 363 of IPC. Later on, Section 376 of IPC and Section 5/6 of POCSO Act were also added, as the victim is minor. Thereafter, it is revealed that she is pregnant, therefore, present petition is filed with a prayer to permit the petitioner for termination of the pregnancy.

3. This Court by order dated 08.05.2024, issued a direction to the Superintendent of Jaya Arogya Hospital, Gwalior to constitute a committee of Doctors for examining the health condition of the petitioner and to submit the report that whether her pregnancy can be terminated or not and if so whether it will be safe for the petitioner in future. Petitioner was directed to appear on 10.05.2024 for the purpose of examination in the Jaya Arogya Hospital, Gwalior.

4. Learned Govt. Advocate submitted the report. As per the report a committee of 7 doctors including dean of gynecology department, doctor from radiology department, Surgery, Medicine was constituted and the doctors examined the petitioner on 10.05.2024 and her Eco Cardiogram was found clear. Her pathology tests were found clear. In Ultrasonic examination the pregnancy of 9 weeks, six days was found and in the opinion of the committee of seven doctors, the pregnancy can be terminated and there is no risk to the petitioner. The Medical Termination of Pregnancy Act, 1971 provides certain procedure for termination of the pregnancy in respect of the matters connected with the commission of offences. Section 3 and 4 of the Acts reads as under:-

"3.(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."

5. In view of the aforesaid provisions, pregnancy can be terminated only with the permission of the Court only in special circumstances. Considering the fact that the petitioner may face social problems and mental agony in future, if she will give birth to a child, as the petitioner is a rape victim and looking to the fact that she is carrying pregnancy of 9 weeks, six days as reported by the Committee in its report, it is safe to permit the petitioner to undergo the termination of the pregnancy.

6. Consequently, the petition is allowed. The petitioner is permitted to undergo the termination of the pregnancy at Jaya Arogya Hospital, Gwalior. The Superintendent of the hospital is directed to make arrangements for the purpose of termination of pregnancy of the petitioner and the same be performed at most care and caution at the earliest.

7. Petitioner is directed to present in the hospital for the purpose of further investigation and termination of pregnancy on 16th May, 2024.

8. Needless to mention that as petitioner is a rape victim, therefore, DNA of the fetus be preserved and handed over to the investigating officer upon demand.

Copy of this order be forwarded to the Superintendent of Jaya Arogya Hospital,

Gwalior.

With the aforesaid, present petition is disposed of.