

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

Through video conferencing at Srinagar

WP(C) No.1031/2020
CM No. 2732/2020

Miss Z

...Petitioner(s)

Through : Mr. Mohammad Shakir Hussain-Adv.
v/s

UT of J&K & Ors.

...Respondent(s)

Through: Mr. Raman Sharma, AAG

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

01/ In this Petition, filed under Article 226, the petitioner – a minor craves indulgence of this Court through her father in granting the following reliefs:

“Mandamus directing the respondent NOs. 4&5 to carry out the termination of the pregnancy of petitioner by preserving the DNA samples for fetus for the identification of the DNA as evidence in FIR No. 104/2019 dated 25-12-2019 registered at police station Gandoh, petitioner who is minor presently about 21 weeks pregnancy conceived by rape constitute a grave mental, physical and social injury to petitioner.

Further directing the respondents NOs. 4&5 for providing better and free medical facility because the petitioner is living in extreme abject condition.”

02/ The background facts enumerated in the petition under the cover of which the aforesaid reliefs are being claimed, are that the petitioner a minor came to be kidnapped by one Ashok Kumar and other persons on 19-12-2019 and was subjected to rape. Upon lodging of a missing report by

her father with the concerned police on 25-12-2019, F.I.R No. 104/2019 u/s 363/109 IPC got registered against the above persons and under the influence of the said persons, the police concerned did not add offence punishable u/s 376 IPC and POSCO Act in the matter. Petitioner would submit that upon being recovered by the concerned police, petitioner was handed to her parents on 25-04-2020, where after a medical checkup is stated to have been conducted on 12-05-2020. As per the petitioner, during the conduct of the ultrasound test on 06-05-2020, she was found to be pregnant by 21 weeks. It is next stated in the petition that petitioner's parents consented for termination of the aforesaid unwanted pregnancy, which, according to the petitioner, has been causing great mental and social stigma besides health danger to her and in this regard, she approached the Govt. Medical College, Doda, and hospital at Jammu, but the authorities there refused to undertake the process of termination of pregnancy, thereby leaving no option for the petitioner but to approach this Court through the medium of the present petition. The petitioner, while seeking the aforesaid reliefs in the petition, has referred to section 3 of the Medical Termination of Pregnancy Act, 1971 (for brevity Act of 1971) and Rules made there under.

03/ Upon coming of this matter on 17-06-2020, Mr. Raman Sharma, AAG, was directed to accept notice and to file the Status Report qua the investigation of the above referred FIR by or before 22-06-2020. He filed the Status Report, in essence, endorsing therein the alleged occurrence of rape inasmuch as the fact of pregnancy of the petitioner – victim. Mr. Sharma, AAG, verbally informed the Court that the said FIR has been

challenged in the Court of Principal Sessions Judge, Baderwah on 22-06-2020 u/s 363/376/109 IPC and 4 of POSCO Act against the accused persons. On 26-06-2020, this Court directed medical examination of the petitioner by an expert team seeking medical opinion as to whether termination of pregnancy of the petitioner – victim would be medically permissible and feasible. Medical report/opinion of the team of experts was submitted by Mr. Sharma, AAG, and the said team seemingly comprised of 02 Gynecologists, one Radiologist and one Lecturer in Forensic Science. The team, upon examination of the petitioner – victim on 29-06-2020, gave the following opinion:

“.....After thorough clinical examination, USG radiological examination and lab. Investigation, the board of doctors is of the opinion that she is carrying 24 weeks & 2 days of pregnancy, termination of which is not allowed under MIPact, however, she can undergo termination of pregnancy after correction of anemia.”

04/ This Court, on 30-06-2020, directed further examination of the petitioner – victim by a Psychologist. A report of examination of the petitioner by a psychologist of GMC Jammu came to filed by Mr. Sharma, AAG who opined that the petitioner-victim does not have any active psychopathologies and at present her mental status examination is normal. Upon receipt of the aforesaid expert opinions, copies of which were furnished to learned counsel for the petitioner, who on the said basis would insist for grant of reliefs as prayed for in the petition. Learned counsel for the petitioner – victim in support of his case, while making his submissions, referred to sub section 2 of section 3 of the Act of 1971, which reads as under:

(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 twelve weeks, if such medical practitioner is, or*

(b) *where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,*

Of 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 such physical or mental abnormalities as to be seriously handicapped.*

Explanation I-----Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II-----Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(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."*

05/ While referring to explanation (I) appended to sub section 2 of section 3-I of the Act of 1971, the learned counsel would contend that the alleged pregnancy of the petitioner – victim, having been caused by the alleged rape, constitutes a grave injury to the mental health of the petitioner – victim and that the rider and restraint of 24 weeks, as provided in sub section 2(i) of section 3 of the Act of 1971 is relaxed under the provisions of section 5 of the Act of 1971 which according to the learned counsel is incorporated as an enabling provision beneficial to the pregnant woman seeking termination beyond aforesaid stipulated period. The counsel for the petitioner-victim, while reiterating the contentions urged in the writ petition and making the aforesaid submissions would also

buttress the same, relying heavily on the judgement of the Apex Court reported in **(2016) 14 SCC 382, titled as "X vs. Union of India & Ors."**

(2017) 7 Scale 289 titled as "Sarmishtha Chakraborty & Ors vs. Union of India Secretary & Ors."

(2017)3 SCC 458 titled as "X vs. Union of India & Ors."

In order to demonstrate that the pregnancy of the petitioner-victim need to be terminated notwithstanding stipulation of 24 weeks placed as in some cases the Hon'ble Supreme court allowed the same.

06/ The legal position in such kind of a case fairly seems to be well settled by various decisions of the Apex Court including supra referred by the counsel for the petitioner wherein the Apex court allowed in specific cases termination of pregnancy beyond aforesaid stipulated period. Reference in this regard is made:

(2018) 14 SCC 75 titled as A vs. Union of India.

(2018) 12 SCC 57 titled as Tapasya Umesh Prisal vs. Union of India.

(2017) 14 SCC 525 titled as Indu Devi vs. State of Bihar and Ors.

(2018) 11 SCC 572 titled as Z vs. State of Bihar.

07/ Analyzing the contentions urged by the petitioner-victim in the petition, objections/Status Report filed by the respondents 1 to 3 coupled with the aforesaid medical opinions and taking into account the aforesaid Judgments of the Apex /court, this petition can be disposed of in the following terms:

“The respondents 4 &5 to undertake a fresh check up/examination of the petitioner-victim by a Medical Board including a Psychiatrist as well and on the basis of opinion/report of the said Board, take a final call regarding termination of pregnancy of the petitioner-victim. Should the respondents 4&5 on the basis of said medical opinion/report decide to undertake termination of pregnancy of the petitioner-victim, necessary measures be also taken for preserving of DNA samples of the foetus and for the said purpose, the respondents 2&3 be also associated therewith. It is needless to mention here that the petitioner-victim be provided appropriate free medical facilities in the event termination of pregnancy is undertaken.”

Disposed of.



(JAVED IQBAL WANI)

JUDGE

Jammu
01-07-2020
Tariq A. Mota.

**Whether the order is speaking : Yes/No.
Whether the order is reportable : Yes/No.**



