

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2020 / 20TH AGRAHAYANA, 1942

WP(C).No.27546 OF 2020(P)

PETITIONER:

(IDENTITY MAY NOT BE PUBLISHED AS PER SUPREME COURT GUIDELINES)

MRS. S.

BY ADVS.
DR.K.P.PRADEEP
SHRI.HAREESH M.R.
SMT.T.THASMI

RESPONDENTS:

- 1 UNION OF INDIA REPRESENTED BY SECRETARY, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, SHASTRI BHAVAN, NEW DELHI-110001.
- 2 STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
- 3 DIRECTOR OF MEDIAL EDUCATION, MEDICAL COLLEGE, KUMARAPURAM RD., CHALAKKUZHI, THIRUVANANTHAPURAM, KERALA-695011.
- 4 STATION HOUSE OFFICER/INSPECTOR OF POLICE, MANJESWAR POLICE STATION, MANJESWAR, KASARGOD-671323.
- 5 SUPERINTENDENT, GOVERNMENT MEDICAL COLLEGE HOSPITAL, KANNUR, PARIYARAM, KANNUR-670503.
- 6 GOVERNMENT MEDICAL COLLEGE HOSPITAL, KANNUR, PARIYARAM, KANNUR-670503 REPRESENTED BY ITS SUPERINTENDENT.

SMT.VINITHA.B., GOVERNMENT PLEADER
SRI.P.VIJAYAKUMAR, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.ASHA J.

W.P. (C) No.27546 of 2020-P

Dated this the 11th day of December, 2020

JUDGMENT

The mother of an unfortunate rape victim minor girl aged 14 years has approached this Court pointing out that the girl is carrying 20 weeks of pregnancy and continuation of her pregnancy would be critical to her health and contrary to her interest. A Crime no.766/2020 has been registered in Manjeswaram Police Station, in respect of the incident. The Writ Petition is filed producing Ext.P2 medical report dated 07.12.2020 and Ext.P3 outpatient record of the girl, which found that she was having 21 weeks and 3 days of pregnancy. It is stated that the victim girl is not mentally prepared to accept the pregnancy and that there is high risk of all obstetric complications in the event of continuation of her pregnancy as she has been subjected to sexual assault.

2. When the matter came up for admission on 09.12.2020, this Court passed an interim order directing the Superintendent of Government Medical College Hospital, Kannur, Pariyaram, to constitute a medical board including a psychiatrist also and to furnish a report on the following:

"(i) Whether the continuance of the pregnancy involves risk to the life of the pregnant child or of grave injury to her physical and mental health ;

(ii) Whether there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped ;

(iii) Whether having regard to the advanced stage of pregnancy, there is any danger (other than the usual danger which arises even in spontaneous delivery or at the end of the full term) if the pregnant victim is permitted to terminate her pregnancy ;

(iv) The medical process best suited to terminate the pregnancy and the possibility of the child be born alive in the process ;

(v) The wishes of the minor child as regards the future course of action with respect to her pregnancy.

(vi) Any other issues the Medical Board regards as relevant in such matters."

3. The learned Government Pleader has made

available the report received from the 5th respondent, according to which the medical board was constituted on 09.12.2020 itself, which reads as follows:

"Minutes of the Medical Board Convened on 10.12.2020 reg. the POCSO, cr.no.766/2020, Manjeswaram Police Station and W.P(c).No.27546 of 2020 of Hon'ble High Court of Kerala.

Members Present.

- 1. Dr. K.M. Kuriakose, Principal & Chairman*
- 2. Dr.Sudeep K, Medical Superintendent*
- 3. Dr.Sumangali P.K, Professor, Dept.of OBG*
- 4. Dr.Yesudas K.F, Professor & HOD, Dept.of Psychiatry.*

Based on the report of the medical officer, Dr.Simi Kurian, Associate Professor, Dept. of Obstetrics and Gynaecology, after examination of the victim of POCSO case, crime no: 766/20 of Manjeshwaram Police Station who was brought to Government Medical College, Kannur on 03/12/2020 the Medical Board examined the case and came to the following conclusions.

- 1. The victim is now having a pregnancy of period of gestation 22 weeks plus 3 days.*
- 2. As she is only 14 years old, continuation of pregnancy may be detrimental to the physical and mental health of the victim.*
- 3. The usual means of termination of pregnancy involves oral medication followed by mechanical induction with a view towards vaginal expulsion of products of conception.*
- 4. The Medical board felt that the available methods of MTP are effective only upto 20 weeks of gestation. Beyond 20 weeks, pregnancy is to be induced as per induction of normal pregnancy.*
- 5. In view of the gestational age of 22 weeks, in addition to the usual risks like haemorrhage, sepsis, risk of blood transfusion etc. due to the present gestational age, there is a possibility that the uterus may not respond to the usual methods of medical induction. In that situation we may have to resort to surgical methods(hysterotomy) which involves anaesthesia and surgical risks.*
- 6. There is a possibility that the child may be born alive, however the chances of survival is remote.*
- 7. Based on the available ultrasound there is no physical abnormality in the fetus. As per National Resuscitation Programme guidelines India and American Academy of Paediatrics, resuscitation is considered only after completion of 24 weeks of pregnancy. If the baby is born before 24 weeks gestational age, resuscitation need not be considered.*
- 8. Dr.Deepak.K.Prabhakar, Dept. of Psychiatry after examination of the victim, opined that continuation of pregnancy may result in severe psychiatric trauma. Hence it*

was suggested that termination of pregnancy could be considered.

9. Moreover, the victim and her mother are requesting for termination of pregnancy."

From the report, it is seen that as on 09.12.2020, the pregnancy is of 22 weeks plus 3 days. The Psychiatrist, who examined her, has reported that the minor does not want continuance of the pregnancy.

4. In cases where the period of gestation exceeds the period prescribed in Section 3 and 4 of Medical Termination of Pregnancy Act, it is permissible under Section 5 of the Act which reads as follows:

"5. S.3 and S.4 when not to apply. - (1) The provisions of S.4 and so much of the provisions of sub-section (2) of S.3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman."

5. This Court has in the judgments in **ABC v. Union of India & others**: 2020(4) KLT 279, **Ms. X v. State of Kerala and Others**: 2016 (4) KLT 745 etc., have ordered termination of pregnancy exceeding 20 weeks in the case of rape victims, who were not mentally prepared to deliver the child, in order to save their lives. The Apex Court has in the judgment in **A v. Union of India** : (2018)4 SCC 75 permitted termination in a case where the gestational age was 25-26 weeks. In **Murugan Nayakkar v. Union of India**: 2017 SCC

online SC 1092 allowed termination of pregnancy in the case of 13 year old child and in **Sarmishtha Chakraborty v. Union of India:** (2018) 13 SCC 339, permitted termination of pregnancy when the gestational age was 26 weeks, in view of the recommendation of the medical board and the medical report revealing the threat of severe mental injury to the woman and to the multiple complex problems to the child, if born alive, involving complex cardiac corrective surgery stage by stage after birth, in the event of continuation of the pregnancy. In **Meera Santosh Pal v. Union of India:** (2017) 3 SCC 462 also permission was granted when the pregnancy crossed 24 weeks, in view of the medical reports pointing out the risk involved. In the judgment reported in **Neethu Narendran v. State of Kerala:** 2020(3)KHC 157 also this Court permitted termination of pregnancy when gestational age crossed 23 weeks. In view of the medical report furnished in the present case, I deem it necessary to permit termination of pregnancy of the minor girl. As found in those cases the minor victim in this case is also not prepared to deliver a child in the situation. In such an eventuality, the mental stress she will have to face would affect her normal life. In view of the trauma that the minor girl has undergone and taking note of the opinion of the Psychiatrist coupled with the report of medical board, I am of the view that the Writ Petition can be allowed permitting termination of pregnancy. Hence the

Writ Petition is allowed with the following directions:

1) In the event the baby is born alive, it has to be taken care of as observed by the Bombay High Court in the judgment in **XYZ v. Union of India and Others** (2019 (3) Bom. CR 400), as follows :

"If a child is born alive, despite attempts at the medical termination of pregnancy, the parents as well as the doctors owe a duty of care to such child. The best interests of the child must be the central consideration in determining how to treat the child. The extreme vulnerability of such child is reason enough to ensure that everything, which is reasonably possible and feasible in the circumstances, must be offered to such child so that it develops into a healthy child."

Therefore, the petitioner is permitted to subject her daughter to medical termination of pregnancy,

2) As any delay in undertaking the termination will involve serious consequences affecting the girl as well as the life of the baby in the womb, there shall be a direction to the Superintendent of Government Medical College, Kannur, Pariyaram to see that the termination of pregnancy of the minor girl-the daughter of the petitioner is undertaken by competent doctors under his/her supervision, at the earliest point of time, if possible, today itself, in accordance with the provisions of the Medical Termination of Pregnancy Act, 1971, its rules and all other rules, regulations and guidelines prescribed for the purpose. The Medical

Board shall maintain a complete record of the procedure which is to be performed on the girl for termination of her pregnancy,

3) There will be a further direction to the Doctors to take the tissue of the foetus for DNA identification and to maintain the same intact for future purposes, especially due to the fact that a criminal case is pending in the instant case. If the child is born alive, despite the attempts at medical termination of the pregnancy, the Doctors shall ensure that everything, which is reasonably possible and feasible in the circumstances and in contemplation of the law prescribed for the purpose, is offered to such child so that he/ she develops into a healthy child.

4) The petitioner is accordingly directed to report with her minor daughter before the 6th respondent-the Superintendent of the Government Medical College, Kannur, Pariyaram today itself.

6. The Registry and all concerned, shall see that absolute privacy is maintained with respect to the identity of the petitioner and that of minor girl while issuing the certified copy of the judgment or

otherwise. There shall be a direction that copy of the Writ Petition, affidavit, the documents annexed to it and the medical report shall not be issued to any third person to this Writ Petition without obtaining orders from this Court.

Sd/-

P.V.ASHA, JUDGE.

rtr/

