

WP (C) .No.29209 OF 2020 (A)

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 04TH DAY OF JANUARY 2021 / 14TH POUSHA, 1942

WP (C) .No.29209 OF 2020 (A)

PETITIONER/S:

- 1 XXX  
AGED 37 YEARS  
X
- 2 YYY  
AGED 34 YEARS  
X
- 3 ABC  
AGED 15 YEARS  
MINOR

BY ADV. SRI.ADITHYA RAJEEV

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY, MINISTRY OF CHILD  
WELFARE, THYCAUD, THIRUVANANTHAPURAM, PIN-695 014.
- 2 THE DIRECTOR OF MEDICAL EDUCATION  
DIRECTORATE OF MEDICAL EDUCATION, MEDICAL COLLEGE  
P.O., THIRUVANANTHAPURAM, PIN-695 011.
- 3 THE DIRECTOR OF MEDICAL SERVICES, GENERAL HOSPITAL  
JUNCTION, THIRUVANANTHAPURAM-695 035.
- 4 THE DISTRICT MEDICAL OFFICER  
KOTTAYAM DISTRICT, OFFICE OF THE DISTRICT MEDICAL  
OFFICER, KOTTAYAM-686 002.
- 5 THE SUPERINTENDENT OF MEDICAL COLLEGE HOSPITAL  
KOTTAYAM GANDHI NAGAR P.O., KOTTAYAM, PIN-686 008.
- 6 THE UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, MINISTRY OF WOMEN AND  
CHILDREN DEVELOPMENT, SASTHRI BHAVAN, NEW DELHI,  
PIN-110 001.

WP(C).No.29209 OF 2020(A)

2

**OTHER PRESENT:**

**SMT.PRINCY XAVIER,GP,  
ASGI SRI.P.VIJAYAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
04.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**JUDGMENT**

Dated this the 4<sup>th</sup> day of January, 2021

An unfortunate minor rape victim girl aged 15 years, has approached this Court along with her parents, pointing out that the girl is carrying about 23 weeks of pregnancy and that continuation of her pregnancy would be contrary to her interest. Crime No.1171/2020 has been registered in Thrikodithanam Police Station, in respect of the incident. The Writ Petition is filed producing Exts.P3 and P5 medical reports dated 09.12.2020 and 15.12.2020. As per Ext.P3 report the gestational age was found to be 22 weeks and 6 days as on 09.12.2020. It is stated that victim girl is not mentally prepared to accept the pregnancy and that there is high risk in the event of continuation of her pregnancy as she has been subjected to the trauma of sexual assault.

2. When the matter came up for admission on 29.12.2020, this Court passed an interim order directing the District Medical Officer, Kottayam to constitute a medical board with all specialists required to conduct medical termination of pregnancy and file a report before this court traversing through the entire aspects.

3. The learned Government Pleader has made available the minutes of the Medical Board convened on 31.12.2020 with the

following members:

1. *Dr.Shainimol A Thachankary (Consultant, Gynaecology)*
2. *Dr.Asha Sreedhar (Junior Consultant, Gynaecology)*
3. *Dr.Anju S.V. (Junior Consultant, Anaesthesia)*
4. *Dr.Leena Gem John, (Junior Consultant, Paediatrics)*
5. *Dr.Anjana Menon P. (Junior Consultant, Forensic Medicine)*

The opinion of the medical board is the following:

*Opinion regarding continuation of pregnancy:*

*Continuation of pregnancy in teenage girls is having high risk of developing preeclampsia, anemia, post-partum haemorrhage, Hysterectomy, low birth weight for baby perinatal death, post-traumatic stress disorders.*

*Opinion regarding the MTP:*

*Since the girl is 15 years and the pregnancy has advanced up to 26-28 weeks there is high risk for the life of the girl for the following reasons.*

1. *Failure of expulsion of fetus by medical management for MTP may end up in hysterotomy and excessive hemorrhage and hysterectomy and may endanger her life.*
2. *Incomplete expulsion of products of conception may lead to infection, bleeding and sepsis.*
3. *Amniotic fluid embolism, pulmonary embolism may happen*
4. *Anesthetic complications during surgical procedures.*

*Hence MTP should be done, if necessary, at a highly equipped tertiary care Centre with ICU facilities with incorporation of all specialities.*

4. From the report, it is seen that as on today the gestational age is 26 weeks 4 days+/-2 weeks. The medical board

has reported that the continuance of pregnancy is having high risk and post traumatic stress disorders. It is also stated that MTP has to be done in a hospital with highly equipped facilities.

5. As per section 5 of the Medical Termination of Pregnancy Act, termination of pregnancy is permissible even in cases where the period of gestation exceeds the period prescribed in Section 3 and 4 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.*

6. 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 Chakrabortty 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

WP(C).No.29209 OF 2020(A)

6

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. As found in those cases, the minor victim in this case is also not prepared to deliver a child in the situation. 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.

7. 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 **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."*

8. Therefore, petitioners 1 and 2 are permitted to subject

WP(C).No.29209 OF 2020(A)

7

their daughter-3<sup>rd</sup> petitioner to medical termination of pregnancy. 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, Kottayam to see that the termination of pregnancy of the minor girl- the 3<sup>rd</sup> 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.

9. 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.

10. As the minor girl is accommodated at Children's Home,

WP(C).No.29209 OF 2020(A)

8

Kottayam, there shall be a direction to the Superintendent of the Children's Home, Kottayam to produce the child victim before the Superintendent of the Government Medical College, Kottayam today itself.

The Registry and all concerned, shall see that absolute privacy is maintained with respect to the identity of the petitioners 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 without obtaining orders from this Court.

The Writ Petition is allowed accordingly.

**Sd/-**

**P.V.ASHA**

**JUDGE**

rkc



