



2024:CGHC:50597

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 6493 of 2024

A B C Nil

... Petitioner(s)

versus

- 1 - State Of Chhattisgarh Through Its Secretary, Department Of Public Health And Family Welfare, Mahanadi Bhawan, Atal Nagar, District- Raipur, Chhattisgarh
- 2 - Chairman District Medical Board, Bilaspur District Hospital, District- Bilaspur, Chhattisgarh
- 3 - Dean Chhattisgarh Institute Of Medical Sciences (C I M S), Bilaspur, Chhattisgarh
- 4 - Chief Medical And Health Officer District Hospital - District- Bilaspur, Chhattisgarh
- 5 - Station House Officer Police Station- Tarbahar, Bilaspur, District- Bilaspur, C.G.

---- Respondent(s)

(Cause title taken from Case Information System)

For Petitioner : Shri Ashish Tiwari, Advocate
For Respondent/State : Mr. Ajit Singh, Govt. Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

26/12/2024

1. On being urgency shown in the petition, the matter has been taken up in the winter holidays on 24.12.2024, and detailed medical report of the petitioner from the Medical Board, Bilaspur, constituted for the Medical Termination of Pregnancy (MTP) under the Medical Termination of Pregnancy Act, 1971 (for short, "the Act of 1971") was called. After her examination, the Medical Board has submitted its report today itself, which is being taken on record, and then, this Court proceeds to decide the matter.
2. The petitioner, who is a victim of rape, and sexual violence, has preferred this writ petition on 23.12.2024 for termination of pregnancy, which, according to her, is a result of commission of offence of rape upon her, with the following prayer:

"This Hon'ble Court may kindly be pleased;

(a) To allow the Petitioner to terminate her ongoing pregnancy through registered medical practitioners at any approved private or government center or Hospital before the completion of 24 weeks of pregnancy, and/or;

(b) To direct Respondent No. 4 to constitute a Medical Board of five well reputed doctors including the doctors from the Department of Obst. & Gynecology, Department of Neonatology and Department of Psychiatry to examine the petitioner (victim) physically and as well as psychologically to submit a feasibility report in terms of the Medical Termination of Pregnancy Act, 1971 read with the Medical Termination of Pregnancy Rules 2003 along with determining the following:

(i) Whether carrying the pregnancy to the full term would impact upon the physical and mental well being of the Petitioner?

(ii) Whether termination of the pregnancy can be carried out at this stage without any threat to the life of the Petitioner?

(iii) Whether the age of the Petitioner would impact on the health condition of the Petitioner in case of medical termination of pregnancy?

(iv) Whether the petitioner and her parents are consenting the said procedure as explained by the Doctors with regards to medical termination of pregnancy?

(b) To facilitate the pre-operational and post operational procedure, medical expenses and medical care of the Petitioner.

(d) Pass any other order as this Hon'ble Court deems fit in the interest of justice of good conscience."

3. The petition was came up for hearing before this Court on 24.12.2024. On that day, this Court called a detailed report from the Medical Board constituted under the Act of 1971, and under the Notification dated 7th June, 2024, issued by the State Government, which consists of one Gynecologist, one Pediatrician, one Radiologist/Sonologist, and any other member, as required in the case, available in the hospital, to examine the petitioner. Examination report of the patient/petitioner with regard to her physical and mental state; Stage of pregnancy; Overall condition of foetus; How far the termination of pregnancy will be detrimental; How far it be detrimental, if the petitioner is allowed to complete full term of pregnancy; and Investigation report, and the report was directed to submit through the Collector, Bilaspur. The Collector, Bilaspur was also directed to ensure the compliance of order dated

24.12.2024, and to submit the report of Medical Board on 26.12.2024 before this Court. In compliance of that order, medical report of the petitioner has been submitted through the State counsel, which is taken on record.

4. Shri Ashish Tiwari, learned counsel for the petitioner would submit that the petitioner, who is victim of rape, had lodged the FIR of Crime No.398 of 2024, registered at Police Station, Tarbahar, Bilaspur, on 19.12.2024, in which the investigation is going on. On being medically examined on 07.12.2024, petitioner is found carrying pregnancy of about 18 weeks, and 04 days. Petitioner also underwent the Anti-natal Ultra Sound examination on 07.12.2024, in which her pregnancy was detected as aforementioned. Later on, the matter was reported to the Police, and FIR has been registered against the accused. Petitioner has also given consent in Form GA under the Act of 1971 for termination of her pregnancy. Medical Board, Bilaspur has also opined in their report dated 26.12.2024. That the termination of pregnancy of the petitioner is permissible as per examination report of the petitioner for termination of pregnancy up to 24 weeks. Petitioner has knocked the door of this court by filing this writ petition to prevent herself from severe mental agony of carrying unwanted pregnancy. In support of his submission, learned counsel for the petitioner relied upon the decision of Hon'ble Supreme Court in the matter of **Suchitra Srivastava and another Vs Chandigarh, Administration, (2009) 9 SCC 1**, and a prayer is made to direct termination of pregnancy applying "best interest", to prevent the petitioner from further mental agony, which a grave injury to her. Learned counsel has prayed for a direction immediately, in this regard.

5. Learned counsel for the State submits that as per the direction of this Court, 24.12.2024, petitioner was examined on the same day itself, by the Medical Board, duly constituted under the Act of 1971, and report dated 24.12.2024 has been placed on record.
6. Heard learned counsel for the parties, and also perused the record with utmost circumspection.
7. Before proceeding with the medical report of the petitioner, it would be appropriate to notice the relevant provisions by which pregnancy can be directed to be terminated under the Act of 1971. Section 3 of the said Act provides for when pregnancies may be terminated by registered medical practitioners, and states as under:

“3. When pregnancies may be terminated by registered medical practitioners— (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.”

8. In this regard, the Hon’ble Supreme Court in **Suchita Srivastava** (supra) has laid down the guidelines based on the principle of “best interests” theory and held that the Court is required to ascertain the course of action which would serve the best interests of the person in question. Paragraphs 36 and 37 of the report are relevant and are extracted herein-below: -

“36. Courts in other common law jurisdictions have developed two distinct standards while exercising “parens patriae” jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the “best interests” test and the “substituted judgment” test.

37. As evident from its literal description, the “best interests” test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs.

However, that cannot be a ground for denying the exercise of reproductive rights.”

9. The Hon’ble Supreme Court in the matter of **X v. Union of India and others, (2016) 14 SCC 382**, has clearly held that termination of pregnancy after 20 weeks to save life of pregnant woman (an alleged rape victim) in case of grave danger to physical and mental health of the said woman, is permissible, and observed as under: -

“13. Having perused the medical report (relevant extracts whereof have been reproduced herein above), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy.”

10. Similar proposition has been laid down by the Hon’ble Supreme Court in the matter of **X and others v. Union of India and others, (2017) 3 SCC 458**, and also in the matter of **Meera Santosh Pal and others v. Union of India and others, (2017) 3 SCC 462**.
11. Similarly, in the matter of **Mrs. A v. Union of India and others, AIR 2017 SC 4037**, the Supreme Court has granted permission for termination of pregnancy of a woman, aged 22 years, in her 25th to 26th weeks of pregnancy holding that continuation of pregnancy can pose

severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy. Their Lordships held as under: -

“6. Upon evaluation of the petitioner, the aforesaid Medical Board has concluded that her current pregnancy is of 25 to 26 weeks. The condition of the foetus is not compatible with life. The medical evidence clearly suggests that there is no point in allowing the pregnancy to run its full course since the foetus would not be able to survive outside the uterus without a skull.

7. Importantly, it is reported that the continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy.”

12. At this stage, it would be appropriate to notice the medical report submitted by the Medical Board. In the medical report submitted, the condition of foetus i.e. gestation age of foetus has been indicated to be 21 weeks and it has been stated as under: -

“1. Examination Report of Patient

मरीज का बीपी 120/80 पल्स 76 प्रति मिनट

मरीज मानसिक रूप से स्वस्थ तथा समय स्थान एवं शारीरिक रूप से स्वस्थ

a) Systemic Examination-

P/A यूटरस का साईज 21 सप्ताह

एक्सटरनल वेलाटमेंट प्रजेन्ट

अन्दरनी जाँच की आवश्यकता नहीं है।

R/S सभी परीक्षण सामान्य CVS हृदय की धडकन सामान्य पाई गई

CNS मरीज मानसिक रूप से स्वस्थ

मानसिक स्थिति सामान्य

मरीज का सेसरी/मोटर सिस्टम नार्मल

2/3) Stage of Pregnancy

21 सप्ताह / EDD 06-05-2025

लाइव फीटस/फीटल हार्ट साउंड 169 प्रति मिनट

सेनिक मेच्यूरिटी 20 सप्ताह अनस्टेबल प्रजेन्टेशन है

उपरोक्त रिपोर्ट डॉ. के.एल. उरांव, रेडियोलॉजिस्ट की सोनोग्राफी रिपोर्ट के अनुसार है

4) मरीज का मेडिको लीगल टर्मिनेशन ऑफ प्रिगनेंसी मरीज के स्वास्थ्य के लिए नुकसानदायक नहीं है।

5) मरीज का एमटीपी मरीज के स्वास्थ्य के लिए हानिकारक नहीं है।”

13. In the case of **“X v. Union of India & others” (2016) 14 SCC 382** the request for termination of pregnancy was in a case where the pregnancy was of more than 20 weeks. The Hon'ble Supreme Court have permitted termination of pregnancy in matters, where the pregnancy was more than 20 weeks. A few judgments of the Hon'ble Supreme Court are reported in **2017 (3) SCC 458 (X and others v. Union of India and others)**, **2017 (3) SCC 462 (Meera Santosh Pal and others v. Union of India and others)**, **AIR 2017 SC 3931 (Tapasya Umesh Pisal v. Union of India and others)** and **AIR 2017 SC 4037 (Mrs. A v. Union of India and others)**. In all these cases the age of the foetus were more than 20 weeks and taking into consideration the over all condition of the victim, the Hon'ble Supreme Court permitted termination of pregnancy.
14. Recently, the Hon'ble Supreme Court, in the matter of **“X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another” (2023) 9 SCC 433**, in Para 127, has held that:

“127. The object of Section 3(2)(b) of the MTP Act read with Rule 3-B is to provide for abortions between

twenty and twenty-four weeks, rendered unwanted due to a change in the material circumstances of women. In view of the object, there is no rationale for excluding unmarried or single women (who face a change in their material circumstances) from the ambit of Rule 3-B. A narrow interpretation of Rule 3-B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Article 14 requires the State to refrain from denying to any person equality before the law or equal protection of laws. Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14. The law should not decide the beneficiaries of a statute based on narrow patriarchal principles about what constitutes "permissible sex", which create invidious classifications and excludes groups based on their personal circumstances. The rights of reproductive autonomy, dignity, and privacy under Article 21 give an unmarried woman the right of choice on whether or not to bear a child, on a similar footing of a married woman."

15. The victim of rape must be given that much of liberty and right to decide whether she should continue with the pregnancy or she should be permitted to terminate the pregnancy.
16. In the facts of the case in hand, it is quite vivid that the pregnancy of the petitioner has crossed 21 weeks of gestational age and unless the judicial order directing termination is available, it may not be possible for the doctors even to proceed with termination of pregnancy.
17. Taking into consideration the entire facts including the circumstances, what has been stated by the victim, her gestational age, judicial

precedents, taking into consideration her pregnancy and risk involved in the childbirth, medical condition of the victim/petitioner and as per the Explanation-1, appended to Sub-section 2 of Section 3 of the Act of 1971, mental agony of a rape victim (petitioner) has to be treated as a case of grave injury, particularly taking into consideration that it is in the best interest of the victim alone, which has to be kept in view and considering the provisions of Sections 3 and 4 of the Act of 1971 and Explanation-1 that the termination of pregnancy is immediately necessary to save the life of a pregnant girl; like the petitioner herein, in the interest of justice, it would be proper to direct that the Medical Board constituted under the Medical Termination of Pregnancy Act, 1971 and also under the notification dated 7th June, 2024 issued by the State Government, shall consider the feasibility of termination of pregnancy at this gestational age. Accordingly, the writ petition is allowed with following directions:

(i) The petitioner to remain present at District Hospital, Bilaspur, Chhattisgarh on 27.12.2024, at about 11:00 AM, so that the termination of pregnancy can be carried out on 28.12.2024 or on the next day by a team of doctors consisting of one Senior Gynecologists available in the hospital, one Radiologist, one Pediatrician and one Anesthetist after due medical examination of her. The Chief Medical and Health Officer, District Bilaspur is directed to make all such arrangements, if the petitioner and her mother give consent in the prescribed proforma under the Act of 1971 and the rules made thereunder.

(ii) The termination of pregnancy of the petitioner will be supervised by the above stated Medical Board, who shall maintain complete record of the procedure,

which is to be performed on the petitioner for termination of her pregnancy.

(iii) The District Collector, Bilaspur shall ensure the compliance of this order and all necessary expenses will be borne by the State in this regard. The petitioner will be allowed all medical and requisite facilities till she is medically fit even after the termination of pregnancy and shall provide post termination care.

(iv) The doctor, who has to conduct the termination of pregnancy of the petitioner are also directed to preserve the DNA samples of the foetus and thereafter to forward the same to the Hospital Superintendent, District Hospital, Bilaspur/CIMS, Bilaspur in safe custody for the purpose of evidence to be produced in criminal case and send it to the concerned FSL as and when required by the police for investigation in the criminal case.

18. A copy of this order be immediately transmitted to the Collector Bilaspur, Chief Medical and Health Officer, District Bilaspur and also to the Government Advocate appearing in the case for necessary compliance.
19. The examination report submitted by the State counsel, so far as the health condition of the petitioner, shall be made part of this record.

Certified copy today.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE