

**HIGH COURT OF GUJARAT
CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR
Date of Decision: 07/03/2024**

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 3224 of 2024

ABC

Versus

STATE OF GUJARAT & ORS.

Legislation:

Indian Penal Code, 1860

Protection of Children from Sexual Offences Act, 2012

Subject: Petition for the termination of pregnancy of a 16-year-old rape victim at 26 weeks gestation, consideration of the medical report, and subsequent judicial directions.

Headnotes:

Petition for Termination of Pregnancy – Victim aged 16 years seeking termination of pregnancy resulting from rape – Petition filed under POCSO Act and IPC provisions – Pregnancy at 26 weeks and 4 days gestation – Request for DNA identification of fetus tissues for justice. [Para 1.0]

Protection of Minor's Identity – Court directs the anonymization of the minor's identity in all records and judgments to protect her privacy. [Para 2.0]

Background of the Case – Victim raped by uncle and neighbors – FIR filed under various sections of IPC and POCSO Act – Medical examination ordered for feasibility of pregnancy termination. [Para 3.0-4.0]

Medical Board's Report – Pregnancy viable at 26 weeks with associated risks – Medical Board's opinion on risks and viability of fetus, no substantial fetal abnormalities detected. [Para 4.1, 4.2]

Judicial Decision – Termination of pregnancy not permitted due to exceeded statutory limit of 24 weeks, lack of fetal abnormalities, and no immediate threat to petitioner's life – Consideration of rights of unborn child. [Para 6.0]

Reference to Supreme Court Decision – Citing X vs. Union of India & Another in denying the termination request. [Para 7.0]

Directions Issued – Medical follow-up, neonatal care, custody decisions, victim's housing, and financial assistance for victim and child – Directions for victim's interim compensation under the Victim Compensation Scheme. [Para 8.0]

Conclusion and Disposition – Petition disposed of with specific directions, notice discharged. [Para 9.0]

Referred Cases:

- **X vs. Union of India & Another reported in 2023 INSC 919**

Representing Advocates:

Mr. PV Patadiya for the applicant

Mr. Manan Mehta, Addl. Public Prosecutor for the respondent State

ORAL ORDER

[1.0] The uncle of the victim has approached this Court seeking following relief:-

“Your Lordships may be pleased to issue appropriate writ or order or direction to the respondent authority to terminate the pregnancy of the petitioner who is aged 16 years and 12 days, at the earliest, as the same being in the interest of the victim, considering her very young age, physical health and incident of rape causing grave injury to her mental health and further be pleased to direct the respondent no.3 to hand over, in scientific manner, the tissues drawn from the fetus for DNA identification to the Police Inspector, Wadhvan Police Station, Surendranagar for onward transmission of the same to the concerned Forensic Science Laboratory, in the interest of justice; ”

[2.0] Since victim of sexual abuse is a minor, her identity has not been disclosed in this order and she has been referred to as the 'minor' or the 'victim' in the entire order. Registry is directed to anonymize the name of the minor / victim in the judgment and all orders that may be passed as well as in the records which are publicly available.

[3.0] The facts taken out from the petition, are as under:-

[3.1] The father of the victim died before 8 years and her mother has remarried. As the victim lost shelter of her parents in tender age, her own relative i.e. uncle (Fuva) committed rape on her on various occasions. Besides her real uncle, other neighbors have also committed rape of the victim. That, on 25.02.2024, the victim filed the FIR being CR No.11211055240108 of 2024 came to be lodged before Wadhvan Police Station, District Surendranagar for the offences punishable under Sections 363, 366, 376DA, 376(2)(j), 376(2)(n), 376(2)(l), 376(2)(h), 452 and 506(2) of the Indian Penal Code, 1860 and also under Sections 3a, 4, 5(L), 5(N), 5q, 6, 16 and 17 of the Protection of Children from Sexual Offences Act, 2012.

[4.0] On 05.03.2024, this court has passed following order:-

*“Issue **NOTICE** making it returnable on **06.03.2024**.*

Learned APP waives Notice for and on behalf of the respondent State.

*Meanwhile, let the victim minor be examined by the empanelled Doctors at Civil Hospital, Surendranagar, consisting of Medical Superintendent, Senior Female Gynecologist and Physiologist. The victim should be admitted immediately and medical examination shall be carried out to let this Court know as to whether termination of pregnancy is medically feasible considering the fact that she is allegedly victim of rape and her guardian shall follow settled guidelines to know her medical and physiological preparedness. The Investigating Officer is directed to make all necessary arrangement and facilitate the medical examination of the victim and submit a report before the Court tomorrow. Direct Service is permitted **TODAY**.”*

[4.1] On 06.03.2024, learned APP placed on record the report received from the Medical Board but as the report was not specific and clear, this Court passed an order, which reads as under:

“Pursuant to the order dated 05.03.2024 passed by this Court, Police Inspector, IUCAW, Surendranagar has personally remained present and submitted report of Medical Board in Form D, which is taken on record.

Considering the said report it appears that pregnancy is of 26 weeks and 4 days and paragraph No.6 in Form D reads as under:

- “6. Opinion by Medical Board for termination of pregnancy:*
- a) Allowed – With **calculative risk** and complication to mother as soon as possible at **tertiary care** centre*
 - b) Denied*

Justification for the decision: According to MTP Act, of PREGNANCY, continuation of pregnancy can cause social and mental trauma to the patient as it is caused by rape and there are chances of grievous mental trauma to patient.”

Learned APP has fairly submitted that there is no facility available qua tertiary care to mother (herein, minor) except at Rajkot and Ahmedabad.

Considering the aforesaid fact and as report is silent qua some crucial aspect, Medical Board is once again directed to clarify the risk factor qua mother in case of such proposed termination of pregnancy is allowed. The Medical Board is also directed to clearly opine as to whether or not foetus is viable or alive and whether foetus is having any abnormality or not?

Learned APP is directed to communicate the said order to the concerned Medical Board through fax which shall submit the report during the course of the day before 4.30 p.m.. Registry is also directed to communicate the present order to the concerned Medical Board.”

[4.2] Pursuant to the aforesaid order, Dr. Bhavesh Airao Chairperson Medical Board for MTP, Professor & Head Department of ObGy, CU Shah Medical

College, Surendranagar filed a report and this Court passed an order which reads as under:

“1. Pursuant to the order passed today in the morning itself, Dr. Bhavesh Airao, Chairperson Medical Board for MTP, Professor & Head Department of ObGy, CU Shah Medical College, Surendranagar has filed a report, which is taken on record. In the said report, it is opined as under:-

“ Risk factor for this patient for MTP is teenage pregnancy and the complications associated with pharmacological method for MTP includes postpartum haemorrhage, infection, uterine rupture and other unforeseen complications. And if pharmacological method for MTP is not successful and surgical procedure is required, then there are some risk factors associated like hemorrhage, infection, anesthetic complications, drug reactions and other unforeseen complications during any laparotomy (hysterectomy) surgical procedure. However all complications cannot be anticipated.

According to the USG Scan dated 5/3/24, there is live intrauterine fetus with no obvious gross structural defects or soft markers for chromosomal abnormalities to the extent of fetal anatomy studied. However all congenital malformations cannot be ruled out on USG scan done by Radiology.

If MTP done at 26 weeks, 4 days of gestation and there are signs of viability in the newborn baby it will require level-3 Neonatal Intensive Care and prognosis of newborn baby will depend on the condition of baby during perinatal period and condition at that time. If the baby is delivered live, then there are chances of premature and associated complications.”

2. In view of the above, learned APP Mr. Manan Mehta shall take instructions and apprise the Court about the suitable place with available facilities for betterment of victim, where she could get mental support and physical care, as the victim is hailing from Wadhwan Taluka, Dist. Surendranagar.

*List the matter **tomorrow on 07.03.2024.**”*

[5.0] Learned advocate for the petitioner, after reiterating the facts of the case would submit that the minor is the victim of sexual abuse, she is the victim of alleged offence of rape registered with Wadhvan Police Station, District Surendranagar. It is further submitted that the minor has developed pregnancy of twenty-six plus weeks as on the date of the petition. It is painfully submitted that she was sexually abused by the accused. It is further submitted that because of the sexual abuse, the minor has become pregnant and continuance of pregnancy would defame her in the society. It is also submitted that the minor would not be in a position to maintain the child as her mental and physical conditions are too feeble and weak and she is not fit either physically or mentally due to the incident in question. She is in trauma being result of the incident. It is also stated that considering the immature age of the minor, it is neither possible nor permissible to nurture and maintain the child and also considering that such aspect will tarnish the image and

reputation in the society, it is urged to permit to terminate her pregnancy in accordance with law.

[6.0] As noticed above and as per the report submitted by the Medical Board, pregnancy of the victim is of 26 years and 4 days of gestation and there are signs of viability in the newborn baby and if the baby is delivered live, then the chances of premature and associated complications cannot be ruled out. The foetus is live intrauterine foetus with no obvious gross structural defects or soft markers for chromosomal abnormalities. In view of the above, considering the fact that foetus is live and pregnancy has crossed 26 weeks and only 1 day short for reaching to 27 weeks, medical termination of the pregnancy cannot be permitted for the following reasons:

(1) Having crossed the statutory limit of twenty-four weeks, the requirements in either of Section 3(2B) or Section 5 must be met;

(2) There are no “substantial foetal abnormalities” diagnosed by a Medical Board in this case, in terms of Section 3(2B). This Court called for a second medical report from Medical Board to ensure that the facts of the case were accurately placed before it and no foetal abnormality was detected; and

(3) Neither of the two reports submitted by the Medical Board indicate that a termination is immediately necessary to save the life of the petitioner, in terms of Section 5.

(4) The health and risk factor of the mother (herein, minor) and even unborn child has right to proper care and nutrition as and when it is fertilized and has a right of protection from unlawful killing and if termination of such alive foetus is permitted, it would be nothing but foeticide. Though there is no absolute legal status or right recognized by the law, however the Court has to consider the constitutional guarantees of right to live for all human being which obviously includes unborn also in some situation.

Herein, considering the aforesaid facts, though victim is minor having no parents and no one with her to take care of her except her brother and sister, this Court due all sympathy and respect to victim with heavy heart is of the opinion that termination of pregnancy as sought for cannot be permitted as it will lead to commission of another offence of foeticide.

[7.0] For the aforesaid reasons and in view of the decision of the Hon'ble Supreme Court in the case of **X vs. Union of India Another** reported in **2023 INSC 919**, I do not accede to the prayer of the petitioner for medical termination of the pregnancy.

[8.0] Hence, present petition is disposed of with following directions:

- (i) C.U. Shah Medical College and Hospital, Surendranagar shall have to take appropriate steps for follow up of the health of minor victim till she delivers the child. Special treatment to new born child is also ordered to be provided including neonatal care as per the requirement for better growth and health of new born child.
- (ii) Periodical health check-up of minor victim and new born child should be undertaken by the medical expert.
- (iii) After ascertaining the wish of minor victim and physical condition of new born child, custody of new born child be handed over to Specialized Adoption Agency, Surendranagar, Nr. T.V. Station, Behind District Panchayat Office, Surendranagar, in the supervision of the Child Welfare Committee.
- (iv) After ascertaining the wish of minor victim if she do not want to reside alongwith her family members then the concerned Investigating Officer is directed to make appropriate arrangement to shift the minor victim to Nari Sarankshan Gruh, Surendranagar, which shall in turn take care for her better future including to provide educational or vocational training to the minor victim as per the wish of the minor victim.
- (v) The State Government to pay all the medical costs of delivery including expenses towards treatment and nutrition of the victim and new born child and all postpartem expenses for a period of six months.
- (vi) The District Legal Services Authority is directed to take appropriate steps to provide interim compensation as early as possible to minor victim after following due process under the Victim Compensation Scheme.
- (vii) The Secretary, District Legal Services Authority is directed to supervise all the aforesaid directions till the victim delivers and hand over the child for adoption to the Specialized Adoption Agency, Surendranagar.

[9.0] With aforesaid observations and directions, present petition is disposed of. Notice is hereby discharged.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.