

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 26TH DAY OF NOVEMBER 2020 / 5TH AGRAHAYANA, 1942

WP(C).No.25928 OF 2020(M)

PETITIONER:

X  
X

BY ADV. SMT.RESMI NANDANAN

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY SECRETARY, MINISTRY OF WOMAN AND  
CHILD DEVELOPMENT, SHASTRI BHAVAN,  
NEW DLEHI-110 001
- 2 STATE OF KERALA,  
REPRESENTED BY THE SECRETARY, DEPARTMENT OF WOMEN  
AND CHILD DEVELOPMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 3 STATION HOUSE OFFICER/INSPECTOR OF POLICE,  
THALIPARAMBA POLICE STATION, KANNUR-670 141.
- 4 DIRECTOR,  
DEPARTMENT OF GYNAECOLOGY, ACADEMY OF MEDICAL  
SCIENCES, PARIYARAM, KANNUR-670 503.
- 5 SUPERINTENDENT,  
GOVERNMENT MEDICAL COLLEGE HOSPITAL,  
PARIYARAM, KANNUR-670 503.
- 6 DISTRICT CHILD WELFARE COMMITTEE,  
THIRUVANANTHAPURAM, GOVERNMENT CHILDREN'S  
HOME, POOJAPPURA, THIRUVANANTHAPURAM-695 012,  
REPRESENTED BY IS CHAIRPERSON.

R2-5 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
26.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.V.ASHA J.**

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**W.P. (C) No.25928 of 2020**  
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Dated this the 26<sup>th</sup> day of November, 2020

**JUDGMENT**

The mother of an unfortunate rape victim, who is a minor girl, 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.0970/2020 has been registered in respect of the incident. The Writ Petition is filed producing Ext.P2 Ultrasound scan report dated 07.11.2020, which found that the girl was having 20 weeks of pregnancy. It is stated that 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 24.11.2020, this Court passed an interim order

directing the Superintendent of Medical College hospital, 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 made available the report received from the 5<sup>th</sup> respondent which reads as follows:

*"Minutes of the Medical Board Meeting on  
24.11.2020*

*Members Present:*

- 1. Dr. K.M.Kuriakose, Principal,*
- 2. Dr.Sudeep K, Medical Superintendent,*
- 3. Dr.Ajith S, Professor & HOD, OBG,*
- 4. Dr.Gopalakrishna Pillai G, Professor & HOD,  
Forensic Medicine,*
- 5. Dr.Druhin A V, Professor, Psychiatry,*
- 6. Dr.Sabnam S Nambiar, Associate Professor,  
OBG.*

*Emergency Meeting of the above Medical Board was convened on 24.11.2020 at 11.45 am, discussed the various issues related to the pregnancy of 13 years old victim of CR NO.970/20 of Taliparamba Police Station.*

*The victim of POCSO case, crime no:970/20, was brought to Government Medical College, Kannur on 16/11/2020 and was attended by Dr.Sabnam S Nambiar. The period of gestation was estimated to be 20 weeks and 5 days.*

*The Medical Board has unanimously reached the following conclusions:*

*1. As she is only 13 years old, continuation of pregnancy may be detrimental to the physical and mental health of the victim.*

*2. The usual means of termination of pregnancy involves oral medication followed by mechanical induction with a view towards vaginal expulsion of products of conception. The available methods of Medical termination of pregnancy (MTP) are effective only upto 20 weeks of gestation. Beyond 20 weeks, pregnancy is to be induced as per induction of normal pregnancy.*

3. In view of the gestational age of 21 to 22 weeks, in addition to the usual risks like haemorrhage, sepsis, risk of blood transfusion etc, due to the present gestational age (21 weeks 6 days), 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.

4. Based on the available ultrasound report there is no physical abnormality in the foetus.

5. There is a possibility that the child may be born alive, however the chances of survival is remote.

6. As per national neonatology forum guidelines, the viability is 28 weeks of pregnancy. As per Neonatal Resuscitation Program (NRP guidelines India) and American Association of Paediatrics (AAP), resuscitation is considered only after completion of 24 weeks of pregnancy. If the baby is born before 24 weeks of gestational age, resuscitation need not be considered.

7. Considering the childhood status of the victim, the psychiatrist opined that, continuation of pregnancy may result in severe psychiatric trauma and hence it was suggested that termination of pregnancy should be considered.

8. The risks for complications of consanguinity also have to be considered.

9. It is known that the child wishes to terminate the pregnancy."

From the report, it is seen that as on 24.11.2020, the pregnancy is of 21 weeks and 6 days. The psychiatrist, who examined her has reported that the

minor does not want continuance in the pregnancy.

4. Section 5 of Medical Termination of Pregnancy Act 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."*

This Court has in the judgments in **ABC v. Union of India & others**: 2020(4) KLT 279 and **Ms. X v. State of Kerala and Others**: 2016 (4) KLT 745 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 **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.

5. In view of the medical report furnished in the present case, I deem it necessary to permit termination of pregnancy of the minor girl child of the petitioner. As found in those cases the minor victim in this case is also not prepared to deliver a child in the situation. Such an eventuality of mental stress 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 and I do so permitting termination of pregnancy.

6. 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."*

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

7. 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 Medical College Hospital, Pariyaram, Kannur 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, 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.

8. 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.

9. The petitioner is accordingly directed to report with her minor daughter before the Superintendent of the Medical College Hospital, Pariyaram, Kannur either today or tomorrow itself (27.11.2020).

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**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXHIBIT P1**                      **A TRUE COPY OF THE FIR IN CRIME NO  
0970/2020 AT THALIPARAMBA POLICE STATION.**

**EXHIBIT P2**                      **A TRUE COPY OF THE OBSTETRICS ULTRASOUND  
REPORT OF THE GIRL ON 07.11.2020.**