

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 11TH DAY OF FEBRUARY 2021 / 22ND MAGHA,1942

WP(C).No.3481 OF 2021(I)

PETITIONER :

MRS R.
XXXX

BY ADVS.
DR.K.P.PRADEEP
SRI.T.T.BIJU
SMT.T.THASMI
SMT.M.J.ANOOPA

RESPONDENTS :

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY, MINISTRY OF WOMEN AND
CHILD DEVELOPMENT, SHASTRI BHAVAN,
NEW DELHI 110 001.
- 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF WOMEN
AND CHILD DEVELOPMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN 695 001.
- 3 DIRECTOR OF MEDICAL EDUCATION,
MEDICAL COLLEGE KUMARAPURAM RD, CHALAKKUZHI,
THIRUVANANTHAPURAM, 695 011.
- 4 STATION HOUSE OFFICER/INSPECTOR OF POLICE,
VATTAPARA POLICE STATION, VATTAPARA, POLICE
STATION, VATTAPARA, THIRUVANANTHAPURAM 695 028.
- 5 SUPERINTENDENT,
GOVERNMENT MEDICAL COLLEGE HOSPITAL, KUMARAPURAM
P.O, THIRUVANANTHAPURAM 695 011.
- 6 SUPEERINTENDENT,
GOVERNMENT WOMEN AND CHILD HOSPITAL, THYCAUD,
THIRUVANANTHAPURAM 695 014.

7 DISTRICT CHILD WELFARE COMMITTEE,
THIRUVANANTHAPURAM, GOVERNMENT CHILDREN'S HOME,
POOJAPURA, THIRUVANANTHAPURAM 695 012
REPRESENTED BY ITS CHAIRPERSON.

SMT.PRINCY XAVIER, GOVERNMENT PLEADER
ASGI. SRI.P.VIJAYA KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.ASHA J.

W.P. (C) No.3481 of 2021-I

Dated this the 11th day of February 2021

JUDGMENT

The mother of an unfortunate minor rape victim girl aged 16 years, has approached this Court, pointing out that the girl is carrying about 25 weeks of pregnancy and that continuation of her pregnancy would be traumatic to her. A Crime No.204/2021 has been registered in Vattapara Police Station, in respect of the incident. The Writ Petition is filed producing Ext.P1 FIR dated 03.02.2021 and Ext.P2 medical report dated 03.02.2021. As per Ext.P2 report the gestational age was found to be 26 weeks and 6 days as on 03.02.2021. 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 10.02.2021, this Court passed an interim order directing the Superintendent of the Government Medical College Hospital, Thiruvananthapuram, 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 minutes of the Medical Board convened on 10.02.2021 with the following members:

1. Dr.Santhosh Kumar.V, Supdt., SATH
2. Dr.Nandini.V.R, HOD, O&G
3. Dr.Adma Harshan, Asso.Professor (06 Unit Chief
4. Dr.Rejani Raju, Dept. of Psychiatry
5. Dr.Mary Iype, Dept. of Pediatric Neurology
6. Dr.Radhika, Dept. of Neonatology
7. Dr.Priyasree J, RMO, Gynaec

8. Dr. Sreekumari.R, Professor O&G (O₂ Unit Chief)"

The opinion of the medical board is the following:

"1. Neonatology consultation done : prognosis of fetus is guarded. High risk of poor neuro developmental outcome.

2. Pediatric Neurology Consultation : Mental and physical development of the fetus is likely to be very bad based on the USS report.

3. Psychiatry consultation : Considering the possible adverse psychological impact for patient and the anomalies of baby, termination of pregnancy can be done.

4. In view of gestational age 28 weeks in addition to the usual risk like, hemorrhage, sepsis, risk of blood transfusion etc. there is a chance of failure of medical methods of termination and in such cases hysterotomy may be needed. Hence surgical and associated anaesthesia risk may be involved.

5. The Medical board felt that the available methods of MTP are effective only up to 20 weeks of gestation. Beyond 20 weeks of pregnancy, labour is to be induced as per induction of normal pregnancy. But because of present gestational age, uterus may not respond to the usual methods of induction and hence we may have to resort to surgical methods which may involve surgical and anesthetic risk. There is possibility that the child may be born alive, however the victim and her guardian (mother) are not willing for resuscitation."

From the report, it is seen that as on today the gestational age is 28 weeks. In view of the opinion of the Psychiatrist, termination of pregnancy can be done.

4. As per Section 3(2)(b) of the Medical Termination of Pregnancy Act 1971, termination of pregnancy is permissible where the length of the pregnancy exceeds

twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of 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 such physical or mental abnormalities as to be seriously handicapped. 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.

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., 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 revealing the threat of severe mental injury to the woman and 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 baby in this situation. In view of the trauma that the minor girl has undergone and taking note of the opinion of the Psychiatrist, I am of the view that the Writ Petition can be allowed 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."

7. Therefore, the petitioner is permitted to subject her daughter 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 Hospital, Thiruvananthapuram 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.

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 shall produce the child victim before the Superintendent of Government Medical College Hospital, Thiruvananthapuram today itself.

10. The Registry and all concerned, shall see that absolute privacy is maintained with respect to the identity of the petitioner 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.

rtr/

