

Court No. - 40

Case :- WRIT - C No. - 31851 of 2024

Petitioner :- 'X'

Respondent :- State Of Uttar Pradesh And 3 Others

Counsel for Petitioner :- Prashant Drivedi,Ram Babu Singh

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

Hon'ble Manjive Shukla,J.

1. Heard learned counsel appearing on behalf of the parties.
2. Present petition has been filed for the following reliefs :-

"A. In the nature of mandamus commanding the respondents/Chief Medical Officer, Kaushambi to immediately constitute a team for medical termination of pregnancy petitioner/X Minor, who is victim of sexual offence.

B. To facilitate the pre-operational and post-operational procedure, medical expenses and medical care including the transportation of victim X or the hospitalization etc."

3. In such circumstances, on 21.9.2021, the following order was passed:-

1. Heard learned counsels appearing on behalf of the parties.

2. The present case requires examination of the girl (victim) by the Medical Board.

3. Accordingly, we direct the Chief Medical Officer, Prayagraj (Allahabad) to constitute a Medical Board of five well reputed Doctors including the Doctors from the departments, namely, Department of Obst & Gynecology, Department of Neonatology and Department of Psychiatry.

4. The Chief Medical Officer may call for the Doctors from different Medical Colleges and Hospitals to constitute the above Medical Board.

5. The Medical Board is directed to examine the petitioner no. 3 (victim) physically as well as psychologically to determine the following :-

a. Whether carrying the pregnancy to the full term would impact upon the physical and mental well-being of the petitioner?

b. Whether termination of the pregnancy can be carried out at this stage without any threat to the life of the petitioner?

c. Whether the age of the petitioner would impact on the health condition of the petitioner in case of medical termination of pregnancy?

d. Whether the petitioner and her parents are consenting to the said procedure as explained by the Doctors with regard to the medical termination of the pregnancy?

e. Whether the petitioner is desirous of medical termination of pregnancy and has not agreed to the same upon coercive or influence of any other person?

6. The Medical Board shall also counsel the petitioner no. 3 (victim) and her parents and advise them of the possibilities of adoption and the secrecy/privacy thereof that would be maintained, in the event the petitioner no. 3(victim) agrees to carry the child to the full term.

7. As the pregnancy is already of about 25 weeks, we direct the Chief Medical Officer, Prayagraj (Allahabad) to immediately constitute the Medical Board as aforesaid at a war footing and submit a report before this Court on September 24, 2024.

8. Parties to act on the computer generated copy of this order downloaded from the official website of the Allahabad High Court.

9. The concerned Authorities/Officials shall verify the authenticity of such computerized copy of the order from the official website of the Allahabad High Court.

10. Let this matter appear on September 24, 2024, as fresh at 10:30 A.M.

11. Registrar (Compliance) is directed to intimate this order to the Chief Medical Officer, Prayagraj (Allahabad) forthwith.

4. Today, Sri Mukul Tripathi, learned Standing Counsel has produced, in sealed cover, a report dated September 25, 2024 submitted by the Chief Medical Officer, Prayagraj. We have perused the same.

5. Contents of the report dated September 25, 2024 are delineated below:-

1- As per ultrasonographic examination, there is single live intra-uterine fetus of gestational age 29 weeks 2 days+/- 1 week 0 day with cardiac activity of 149 beats/ min. (Report attached)

2- Answers of questions mentioned in letter of Registrar General, High Court of judicature at Allahabad. No 9624/RC (Civil) Dated 21-09-2024 are as following-

Question	Answer
<i>a. Whether carrying the pregnancy to the full term would impact upon the physical and mental well being of the petitioner?</i>	<i>Yes, continuing the pregnancy to full term may impact on physical and mental well being of the petitioner.</i>
<i>b. Whether termination of the pregnancy can be carried out at this stage without any threat to the life of the petitioner?</i>	<i>No, termination of pregnancy cannot be carried out at this stage without any threat to the life of the petitioner because termination at this stage will require induction of labour that may be associated with complication and increased chances of surgical intervention</i>
<i>c. Whether the age of the petitioner would impact on the health condition of the petitioner in case of medical termination of pregnancy?</i>	<i>Yes, the age of the petitioner would impact on the health condition of the petitioner in case of medical termination of pregnancy</i>
<i>d. Whether the petitioner and her parents are consenting to the said procedure as explained by the doctors with regard to the medical termination of pregnancy?</i>	<i>Yes, the petitioner and her mother are consenting to the said procedure of termination of pregnancy after being explained and counseled regarding the procedure and possible outcomes.</i>
<i>e. Whether the petitioner is desirous of medical termination of pregnancy and has not agreed to the same upon coercive or influence of any other person?</i>	<i>When the petitioner was questioned by medical board she replied that she is desirous of medical termination of pregnancy and has not agreed to the same upon coercive or influence of any other person.</i>

6. At present, the requirement of law i.e. the Medical Termination of Pregnancy Act, 1971 read with the Medical Termination of Pregnancy Rules, 2003 (as amended in 2021) appears to be met to the extent relief has been sought in the writ petition. The pregnancy sought to be terminated has been caused to a minor girl in face of allegation of rape committed on her. The medical opinion noted above does not bring out any facts and circumstances

as may deny the relief claimed. The medical report reveals that the unwanted pregnancy is about twenty nine weeks and two days (as on September 25, 2024).

7. The medical opinion as to query (d) raised in the last order is in the affirmative and it has been clearly observed that parents of the alleged victim girl are not agreeable to continue the pregnancy for the purposes of giving birth to a child that may be born for adoption. Also, the answers to query (a) and (e) raised in the last order are in the affirmative.

8. In view of the above, the decision made by the victim and her parents may be respected by allowing for termination of the pregnancy.

9. Accordingly, the writ petition is disposed of with a direction upon the Chief Medical Officer, Prayagraj to constitute appropriate team of expert doctors to medically terminate the pregnancy suffered by the victim girl/daughter of the informant in Case Crime No.113 of 2024, Police Station Mahewaghat, District Kaushambi. The direction may be carried out forthwith, preferably within a period of three days from date.

10. The District Magistrate, Prayagraj is directed to be involved in the process so as to ensure that all the medical and ancillary expenses of the petitioner and her family are borne by the State, which shall be inclusive of their travel and stay in Prayagraj.

11. Let a copy of this order be made available to Sri Mukul Tripathi, learned Standing Counsel by tomorrow for onward communication and due compliance.

12. The medical report received in the sealed cover be retained in sealed cover.

13. The aborted fetus may be preserved in accordance with law for forensic examination/evidence in the main case.

14. The Registrar General of this Court is directed to get the name of the petitioner Nos.1 and 2 expunged from the cause title and the same be titled as 'X' in the computer record. It is further directed that in future in the cases relating to Medical Termination of Pregnancy, the cause title should only contain the letter 'X' for victim or any relative of her who is filing the petition.

15. In umpteen matters that had appeared before us wherein the petitioner had prayed for medical termination of pregnancy, we have found that the Medical Colleges including the Chief Medical Officers of the Districts and the doctors that are appointed as part of the Medical Board for examination of the victim are not properly informed about the procedure to be followed while carrying out the examination of the victim and the subsequent medical termination, if ordered. It is to be noted that provisions have been made by the Legislature in form of the Medical Termination of Pregnancy Act, 1971; Medical Termination of Pregnancy Rules, 2003 and the Medical Termination of Pregnancy Regulations, 2003. Furthermore, the Supreme Court in various judgments has elaborated the procedure to be followed in such cases.

16. One has to keep in mind the sensitivity involved in the entire process and it is a matter of grave concern that doctors in some of the districts are not at all familiar with the above legislations and the procedure established by the Supreme Court of India.

17. In light of the same, we direct the Principal Secretary, Medical Health and Family Welfare, Uttar Pradesh to issue a circular providing a comprehensive Standard Operating Procedure to be followed by the Chief Medical Officers and the Medical Boards in such cases.

18. The Registrar Compliance of this Court is directed to forward a copy of this order to the Principal Secretary, Medical Health and Family Welfare, Uttar Pradesh and to the Chief Medical Officer, Prayagraj forthwith.

Order Date :- 26.9.2024

Rakesh

(Manjive Shukla, J.) (Shekhar B. Saraf, J.)