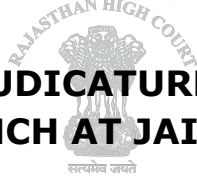


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No.17348/2024

Victim, Aged About 22 Years, R/o Ganj Shahidana Chhapra,
Ahemdabad City, Ahemdabad Gujarat-380028 at present Sakhi
Ban Stop Centre, Dholpur (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Medical And Health, Secretariat, Jaipur (Raj.)
2. Station House Officer, Police Station Mahila Thana, Dholpur, District Dholpur (Raj.)
3. Investigation Officer, Police Station Mahila Thana, Dholpur, District Dholpur (Raj.)
4. Superintendent, Mahila Chikitasalaya, Sanganeri Gate, Jaipur.
5. Freedom Fighter Late Dr. Mangal Singh District Hospital, Dholpur (Raj.)
6. RBM/ Zanana Hospital, Bharatpur.
7. Superintendent, Sakhi Van Stop Centre, Dholpur.

-----Respondents

For Petitioner(s) : Ms. Sangeeta Kumari Sharma
For Respondent(s) : Mr. Vigyan Shah, AAG
Mr. Yash Joshi,
Mr. Harsh Parashar
Mr. Ramkesh ASI, Police Station
Mahila Thana, Dholpur

JUSTICE ANOOP KUMAR DHAND

Order

21/11/2024

1. Instant writ petition has been filed by the petitioner, who was alleged to have been raped by the accused person, seeking permission from this Court for termination of her pregnancy, which is alleged to be of 30 weeks.

2. The petitioner has approached this Court stating therein that an FIR bearing No.306/2024 has been registered by her at Police Station Mahila Thana, Dholpur District Dholpur for the offences under Section 376 IPC in which allegation of rape has been levelled by the petitioner against the accused and as a result of the aforesaid offence, the petitioner got pregnant.

3. It is averred that the child being conceived as a result of the offence committed with her and the petitioner does not wish to give birth to such child, as it would be a constant reminder to her about the atrocities committed on her. The same is stated to be not good for her physical and mental health, as well as, social being of the minor victim. It is also averred that the petitioner and her family members are not able to take care of the child if allowed to be born.

4. At the request of the petitioner, she was subjected to examination by the Medical Board of Mahila Chikitsalya, Sanganeri Gate, Jaipur on 20.11.2024 (hereinafter referred to as "Medical Board").

5. In the opinion of the Medical Board constituting of four Doctors, the pregnancy of the petitioner presently is of 30 weeks and in ultrasound, a single live, cephalic, intrauterine fetus of GA 28 weeks 3 days, liquor adequate, placenta-fundal right lateral, weight 1169 gm and no green anomaly has been found.

6. In the opinion of the members of the Medical Board, the pregnancy of the petitioner can be terminated (pre term delivery) in view of her physical and mental health. It is also opined that she would be at high risk if such surgical intervention is taken of baby being born pre term and alive and need of neonatal care.

Copy of the medical report dated 20.11.2024 is ordered to be taken on record and the same is marked as Annexure-C/1.

7. In the opinion of the Medical Board, the termination of pregnancy of the petitioner is not safe and the same would be life threatening to the victim, due to her advanced gestational period and the age of the petitioner. The passage of time and delay caused in approaching this Court, on the end of the petitioner, has aggravated the situation. There is no material available on the record on the basis of which this Court may differ with the opinion expressed by the Medical Board, hence under these circumstances, if any direction is issued by this Court for termination of the pregnancy of the petitioner, at this advanced stage, the same would endanger the life of the petitioner as well as the fetus growing inside the womb of the petitioner.

8. The Hon'ble Apex Court in the case of the **X v. Union of India**, Writ Petition (Civil) No.1137/2023 refused to grant permission for termination of pregnancy, wherein the lady was carrying 28 weeks pregnancy and it was observed in para 25 to 28 as under:

"25. Under Article 142 of the Constitution, this Court has the power to do complete justice. However, this power may not be attracted in every case. If a medical termination were to be conducted at this stage, the doctors would be faced with a viable fetus. One of the options before this Court, which the email from AIIMS has flagged, is for it to direct the doctors to stop the heartbeat. This Court is averse to issuing a direction of this nature for the reasons recorded in the preceding paragraph. The petitioner, too, did not wish for this Court to issue such a direction. This was communicated by her to

the court during the course of the hearing. In the absence of a direction to stop the heartbeat, the viable fetus would be faced with a significant risk of lifelong physical and mental disabilities. The reports submitted by the Medical Board speak for themselves.

26. For these reasons, we do not accede to the prayer for the medical termination of the pregnancy.

27. The delivery will be conducted by AIIMS at the appropriate time. The Union Government has undertaken to pay all the medical costs for the delivery and incidental to it.

28. Should the petitioner be inclined to give the child up for adoption, the Union Government has stated through the submission of the ASG that they shall ensure that this process takes place at the earliest, and in a smooth fashion. Needless to say, the decision of whether to give the child up for adoption is entirely that of the parents.”

9. Although, the law recognizes the autonomy of a woman to determine as to whether she wants to continue with the pregnancy or not, but looking to unrebutted opinion of the Medical Board available on record, that any attempt of termination of pregnancy, at this advanced stage, is likely to lead to a premature delivery and the same may affect the neurotic development of the unborn child apart from exposing the petitioner’s health to danger. The circumstances in the present case do not permit termination of pregnancy because it may result in premature delivery of the unborn child which may further subject him/her to suffer from abnormality as a result of such attempt.

10. The report of Medical Board indicates that the petitioner is carrying pregnancy of 30 weeks, hence at this advanced stage, termination of her pregnancy is not safe for the petitioner. Hence, under these circumstances, her prayer for termination cannot be accepted.

11. The medical report indicates that fetus is gaining weight and fat and is closure to its natural birth. Vital organs, like brain and lungs are almost fully developed, preparing for life outside the womb. The fetus has, in fact life with heart beats, hence termination of pregnancy, at this stage, is not advisable and possible. The fully developed fetus also has right to life under Article 21 of the Constitution of India to enter in this world and live a healthy life without any abnormalities.

12. Looking to the family situation of the petitioner, where no one is there to take her care, the petitioner can stay at 'Sakhi Van Stop Centre', Dholpur. The Superintendent, 'Sakhi Van Stop Centre', Dholpur and other staff members posted there are supposed to take care of the petitioner by providing her with all kinds of help like nutritious food, medical care and all other assistance which is required for a pregnant woman. The respondents are directed to provide a female nurse for taking care of the petitioner and her health till her safe delivery. The State would provide all kind of facilities to the petitioner to ensure that delivery of the petitioner occurs in a safe environment.

13. If the petitioner desires to give away the child for adoption to any willing parents, she will have the liberty of doing so after following the procedure laid down under the law.

14. Considering the overall facts and circumstances of the case, the instant writ petition stands disposed of with the following directions:-

(i) The respondents are directed to provide the petitioner all necessary care, nutritious food and medical attendance to the petitioner before and after delivery. The Superintendent of Sakhi Van Stop Centre, Dholpur is directed to allow the petitioner to remain there for a period of six months or one year after delivery of the child and provide her all facilities.

(ii) The Principal Secretary, Department of Medical Health and Secretary, Department of Women and Child Development are directed to provide a female nursing attendant at Sakhi Van Stop Centre, Dholpur for taking care of the petitioner till her safe delivery.

(iii) Superintendent of Mahila Chikitsalya, Sanganeri Gate, Jaipur is directed to ensure that all medical facilities are made available to the petitioner before and after delivery of the petitioner without payment of any fee, charges or expenses of any nature and to ensure that the delivery takes place in a safe environment.

(iv) The privacy of the petitioner would be maintained at all stages and her identity should not be disclosed in the course of hospitalization, treatment and admission.

(v) The child, on birth, may be handed over to the Child Welfare Committee of Jaipur and the petitioner shall fulfill all necessary documentation and all formalities as may be so required under the law for handing over custody of the child to the Child Welfare Committee.

(vi) The Child Welfare Committee, Jaipur shall take care of all the needs and facilities of the child.

(vii) The Superintendent of Mahila Chikitsalya, Sanganeri Gate, Jaipur is further directed to retain the tissue, cord and blood sample of fetus preserved for the purpose of DNA analysis by Forensic Science Laboratory (FSL) and the same be handed over to the Investigating Officer as and when required.

(viii) The Rajasthan State Legal Services Authority (RSLSA) as well as District Legal services Authority (DLSA), Jaipur are directed to pay suitable amount of compensation to the petitioner who is a victim in terms of the provisions contained under the Rajasthan Victim Compensation Scheme, 2011 within a period of three months from the date of receipt of certified copy of this order and the amount of compensation be kept in Fixed Deposit in the name of the victim for a period of two years.

(ix) The Superintendent of Police, Dholpur is directed to monitor the entire process and make all possible efforts to ensure compliance of the orders passed by this Court.

15. Copy of this order be provided to the counsel for the petitioner as well as the counsel for the State respondents for necessary compliance and action under the signatures of the Courts Master. Let the copy of this order be also sent to Member Secretary, RSLSA and Secretary, DLSA for necessary compliance.

(ANOOP KUMAR DHAND),J