



2025:CGHC:141

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 6513 of 2024

1. ABC (Minor) Through Natural Guardian XYZ

... Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Ministry Of Public Health & Welfare, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)

2. Chairman, District Medical Board, Raigarh (Chhattisgarh)

3. The Chief Medical Health Officer (CMHO) Medical Board Of District Hospital Raigarh District Raigarh Chhattisgarh

4. Head Officer of Department Gynaecologist (HOD) Gynaic District Hospital, Raigarh District Raigarh (Chhattisgarh)

5. Station House Officer Police Station Dongripali District Sarangarh-Bilaigarh (Chhattisgarh)

... Respondents

(Cause title is taken from Case Information System)

For Petitioner : Shri Basant Dewangan, Advocate

For Respondent/State : Shri Praveen Das, Dy. Adv. General

Order on Board

By

Bibhu Datta Guru, J.

2-1-2025

1. Petitioner is a victim of forcible sexual intercourse committed with her by the accused of Cr.No.21/2024 registered at police station Dongripali,

District Sarangarh-Bilaigarh. As a result of said forcible sexual intercourse, the petitioner is carrying pregnancy, which she wants to abort, as the said pregnancy is causing her anguish and she does not want to have a child born out of a person who has ravished her without her consent and has subjected her to humility and embarrassment before the society.

2. This petition was filed on 30-12-2024 seeking a direction to the authorities to form a panel of expert medical practitioners for the purpose of termination of petitioner's pregnancy. By order dated 31-12-2024, this Court had summoned for a report from the Chief Medical & Health Officer/Civil Surgeon, Raigarh. In compliance of the said order, the said authority examined the victim and submitted the report before this Court.
3. I have heard learned counsel appearing for the parties and perused the record.
4. So far as the proceedings for termination of pregnancy are concerned, the law in this regard has been framed in the Medical Termination of Pregnancy Act, 1971 {as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021} (for short 'the Act') Section 3 of the said Act specifically deals with the conditions. which are required and which have to be adhered to. For ready reference, Section 3 of the said Act is reproduced herein under :

“3. When Pregnancies may be terminated by registered medical practitioners.—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the 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 any serious physical or mental abnormality.

Explanation 1.-For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:-

- (a) a Gynaecologist;
- (b) a Paediatrician;
- (c) a Radiologist or Sonologist: and
- (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.”

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman’s actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

5. In this regard, the Supreme Court in *Suchita Srivastava and Another v Chandigarh Administration*¹ has laid down the guidelines based on the principle of “best interests” theory and held that the Court is required to ascertain the course of action which would serve the best interests of the person in question. Paras 36 and 37 read thus :

36. Courts in other common law jurisdictions have developed two distinct standards while exercising “parens patriae” jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the “best interests” test and the “substituted judgment” test.

37. As evident from its literal description, the “best interests” test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be

1 (2009) 9 SCC 1

guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights.

6. The Supreme Court in the matter of *X v Union of India and others*² has clearly held that termination of pregnancy after 20 weeks to save life of pregnant woman (an alleged rape victim) in case of grave danger to physical and mental health of the said woman, is permissible, and observed as under :

13. Having perused the medical report (relevant extracts whereof have been reproduced herein above), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy.

7. Similar proposition has been laid down by the Supreme Court in the matter of *X and others v. Union of India and others*³ and also in the matter of *Meera Santosh Pal and others v Union of India and others*⁴.
8. Further, in the matter of *Mrs. A v Union of India and others*⁵ the Supreme Court has granted permission for termination of pregnancy of a woman, aged 22 years, in her 25th to 26th weeks of pregnancy holding that continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she

2 (2016) 14 SCC 382

3 (2017) 3 SCC 458

4 (2017) 3 SCC 462

5 AIR 2017 SC 4037

is allowed to undergo termination of her pregnancy. Their Lordships held as under :

6. Upon evaluation of the petitioner, the aforesaid Medical Board has concluded that her current pregnancy is of 25 to 26 weeks. The condition of the foetus is not compatible with life. The medical evidence clearly suggests that there is no point in allowing the pregnancy to run its full course since the foetus would not be able to survive outside the uterus without a skull.

7. Importantly, it is reported that the continuation of pregnancy can pose severe mental injury to the petitioner and no additional risk to the petitioner's life is involved if she is allowed to undergo termination of her pregnancy.”

9. At this stage, it would be appropriate to notice the medical report submitted by the Medical Board. The USG report and the opinion of the Medical Board read thus :

USG Report

- Single live intrauterine fetus cephalic at the time of examination.
- Liquor 14.72
- Placenta Posterior Grade II away from OS
- FHR 159/min.
- EDD 17-4-2025
- GA 24 weeks 6 days
- No gross anomaly seen.

Opinion of the Medical Board

- Physical & Mental status of Victim (Minor) is healthy.
- As per sonography report, she is carrying single live foetus of 24 weeks 06 days with fetal weight 775+/- 124 gm & FHR 159/min., Placenta posterior Gr II well away from OS.
- Overall condition of foetus is within normal limits. No gross congenital anomaly seen.

- Termination of pregnancy can be taken after anaemia correction at Tertiary Care Centre (Medical College Hospital with ICU facilities).
 - If the Victim (Minor) is allowed to continue pregnancy she may deteriorate her mental health. Can develop Psychosis (Antenatal/Postpartum).
10. In the case of *X v Union of India & others*⁶ the request for termination of pregnancy was in a case where the pregnancy was of more than 20 weeks. The Supreme Court has permitted termination of pregnancy in matters, where the pregnancy was more than 20 weeks.
11. Recently, the Supreme Court, in the matter of *X v Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another*⁷ held thus at para 127 :

127. The object of Section 3(2)(b) of the MTP Act read with Rule 3-B is to provide for abortions between twenty and twenty-four weeks, rendered unwanted due to a change in the material circumstances of women. In view of the object, there is no rationale for excluding unmarried or single women (who face a change in their material circumstances) from the ambit of Rule 3-B. A narrow interpretation of Rule 3-B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Article 14 requires the State to refrain from denying to any person equality before the law or equal protection of laws. Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14. The law should not decide the beneficiaries of a statute based on narrow patriarchal principles about what constitutes "permissible sex", which create invidious classifications and excludes groups based on their personal circumstances. The rights of reproductive autonomy, dignity, and privacy under Article 21 give an unmarried woman the right of choice on whether or not to bear a child, on a similar footing of a married woman.

6 (2016) 14 SCC 382

7 (2023) 9 SCC 433

12. The victim of rape must be given that much of liberty and right to decide whether she should continue with the pregnancy or she should be permitted to terminate the pregnancy.
13. In the facts of the case in hand, it is quite vivid that the pregnancy of the petitioner has crossed 24 weeks of gestational age and unless the judicial order directing termination is available, it may not be possible for the doctors even to proceed with termination of pregnancy.
14. Taking into consideration the entire facts including the circumstances what have been stated by the victim; her gestational age; and judicial precedents, the writ petition is allowed with following directions:
- The **petitioner shall be admitted to the Kirodimal Government District Hospital, Raigarh/Medical College Hospital (with ICU facilities), today or in the early hours of tomorrow** and thereafter, the authority concerned shall depute expert registered medical practitioners to cause termination of petitioner's pregnancy by obtaining consent of the victim and her parents, which is otherwise available in form of filing of this petition.
 - The DNA sample of the fetus shall be preserved for further reference as the criminal case against the accused is pending.
15. A copy of this order be immediately transmitted to the Collector Raigarh, Civil Surgeon-cum-Chief Hospital Superintendent, Kirodimal Government District Hospital, Raigarh, as also to the learned counsel appearing for the State for necessary compliance.
16. Certified copy today.

K GOWRI SANKARA RAO	Digitally signed by K GOWRI SANKARA RAO Date: 2025.01.02 14:48:02 +0530
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Gowri

Sd/-

(Bibhu Datta Guru)
Judge

Head Note

A rape victim's prayer for termination of pregnancy can be allowed because such pregnancy causes grave injury to the mental health of the pregnant woman, as she cannot be compelled to give birth to a child of rapist.