

Court No. - 40

Case :- WRIT - C No. - 30708 of 2023

Petitioner :- Ms. X

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Kamlesh Kumar Singh

Counsel for Respondent :- C.S.C., Hem Pratap Singh

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner; Shri Ambrish Shukla, learned Addl. Chief Standing Counsel for State respondents and Shri Hem Pratap Singh, learned counsel for Banaras Hindu University (BHU).

2. Present writ petition has been preferred for a direction to respondents to terminate the unwanted pregnancy of the petitioner, who is rape victim and for a further direction to respondents to bear the complete expenses in this regard.

3. On the matter being taken up on 4.9.2023, the Court has proceeded to pass a detailed order, the operative portion of which is quoted as under:-

".....12. A perusal of the aforesaid Rule reveals that clause (a) relates to victims of sexual assault, rape or incest and clause (b) relates to minors. In the present case, the victim falls under both, i.e. clause (a) and (b) as she is a minor aged around 16 years, who is alleged to have been raped. Therefore, the victim would fall under the special categories as enumerated by the Central Government under the rules notified as per the mandate of section 3(2)(b) of MTP Act.

13. Furthermore, Explanation 2 to the aforesaid provision explicitly provides that where pregnancy is alleged to have been caused by an act of rape, the anguish caused by such a pregnancy shall be presumed to constitute grave injury to the mental health of pregnant woman as required under Section 3(2)(i) of MTP Act. Therefore, it is not in dispute that in case of a minor victim, who is alleged to be sexually assaulted or raped and as a consequence of which she has conceived, the injury that is caused to her mental health is presumed even statutorily.

14. The question before this Court now remains as to whether this Court, using its extraordinary powers under Article 226, should allow the termination of pregnancy of minor victim at the stage of around 28 weeks of pregnancy.

15. During the mid of the hearing, learned counsel for the petitioner further submits that the pregnancy is more than gestational age of 28 weeks, which requires proper facilities, which are not available at District Chandauli. There is proper medical facilities at Sir Sunder Lal Hospital, Banaras Hindu University, Varanasi, wherein, in case the Medical Board permits, her pregnancy may be terminated under the able guidance of medical experts.

16. In this backdrop, we have asked learned counsel for the petitioner to implead "Sir Sunder Lal Hospital, Banaras Hindu University, Varanasi" through its Medical Superintendent as respondent no.6 to the writ petition, forthwith and immediately notice has also been served upon Sri Hem Pratap Singh, Advocate, who represents the newly impleaded respondent no.6

before this Court.

17. Though the statute does not provide for termination of pregnancies over the gestational age of 24 weeks except in case of detection of substantial foetal abnormalities, the provision in regard to which is Section 3(2B) of MTP Act, the extraordinary powers of the Constitutional Courts, however, have been recognized even by the Hon'ble Supreme Court of India and exercised several times by the High Courts to allow termination of pregnancies even in cases where pregnancy has exceeded the limit of 24 weeks.

18. In the case of sexual assault, denying a women right to say no to medical termination of pregnancy and fasten her with responsibility of motherhood would amount to denying her human right to live with dignity as she has a right in relation to her body which includes saying Yes or No to being a mother. Section 3(2) of the MTP Act reiterates that right of a woman. To force the victim to give birth to child of a man who sexually assaulted would result in unexplainable miseries.

19. Considering the urgency in the matter and taking humanitarian view as the petitioner is a 15 years rape victim, we request the Medical Superintendent of "Sir Sunder Lal Hospital, Banaras Hindu University, Varanasi" to constitute a Five-Members Team headed by Department of Obs & Gynae; Department of Anaesthesia and Department of Radio Diagnosis to examine the petitioner tomorrow i.e. 05.09.2023 and submit a report before this Court in sealed cover on 06.09.2023 through Sri Hem Pratap Singh, learned counsel for the Banaras Hindu University.

20. The District Magistrate, Chandauli is directed to ensure that the victim alongwith her parent may appear before the Medical Board on 05.09.2023 at 10 AM.

21. Put up this matter again as fresh on 06.09.2023 at 10.30 AM.

22. Let a copy of the order be given to learned counsel for the petitioner; Sri Ambrish Shukla, learned Additional Chief Standing Counsel and Sri Hem Pratap Singh, learned counsel for the Banaras Hindu University free of cost today for compliance."

4. In response to the aforesaid order, learned counsel for BHU has placed the report of the Medical Board dated 5.9.2023 sent by the Medical Superintendent, Sir Sunderlal Hospital, BHU in sealed cover. The seal was opened in the Court. The report is taken on record. From perusal of the said Medical Report, it transpires that on the basis of requisite investigations, the Medical Board unanimously is of the opinion that the victim is medically fit to undergo any operation. The fetus is of 30 weeks gestational age as per USG report. There is a possibility of live birth as the fetus (unborn child) has crossed the age of viability (i.e. more than 24 weeks Gestational age). It is further opined that in view of the prematurity of the fetus, neonate (born fetus) may or may not survive.

5. During the course of the hearing, the said medical report has also been apprised to the father of the victim. The father of the victim has also filed an affidavit through his counsel, which is also taken on record. In the affidavit, it is averred that till the birth and, thereafter, the victim's father is ready to keep and look after the baby until the adoption. It is further requested that expenditure of

medical facility, maintenance of new born baby till adoption and other facilities, which are required for new born baby may also be provided to the father of the petitioner by the State.

6. Considering the pathetic financial condition of the victim and her family members, we direct that adequate medical facility be provided to the victim at the District Hospital, Chandauli and if required at Sir Sunderlal Hospital, BHU.

7. Meanwhile, the District Magistrate, Chandauli shall also proceed to provide ex-gratia payment to the rape victim in the light of the scheme known as 'Rani Laxmi Bai Mahila Samman Kosh'.

8. Put up this matter on 9.10.2023 in top ten of the cases.

9. Let a copy of this order be provided to learned counsel for the parties free of cost today itself for necessary compliance.

Order Date :- 6.9.2023

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