

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 11554 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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XYZ
Versus
STATE OF GUJARAT

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Appearance:

MR. BHARGAV K MEHTA(7094) for the Applicant(s) No. 1
MR AMIT N CHAUDHARY(5599) for the Respondent(s) No. 6
MR DEVENDRA PATEL(13624) for the Respondent(s) No. 6
NOTICE NOT RECD BACK for the Respondent(s) No. 2,3,4,5
MR BHARGAV PANDYA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 08/09/2023
ORAL JUDGMENT

RULE. Learned APP waives service of notice of rule on behalf of the respondents.

1. By way of this petition, the petitioner has prayed

for the following reliefs;

“(A) Your Lordships be pleased to grant permission to the petitioner- minor victim to terminate the pregnancy as the pregnancy is of 16 weeks to 17 weeks at the earliest, as the continuance of pregnancy would cause grave injury to the petitioner- victim, in the interest of justice.

(B) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to direct the respondents to undertake necessary medical tests of petitioner- victim by the qualified surgeon/s including Gynecologist, Obstetrician, in presence of a qualified physician with due care and precaution, so as to avoid any likelihood of untoward harm to the physical or mental health of petitioner, and to submit report thereof to this Hon’ble Court with immediate effect or at the earliest as deemed fit and proper to the Hon’ble Court for its subjective satisfaction.

(C) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to grant permission to the petitioner- minor victim to terminate the pregnancy as the continuance of pregnancy would cause grave injury to the petitioner- victim as the pregnancy is of 16 weeks to 17 weeks presently in the interest of justice.

(D) The Hon’ble Court be pleased to grant such other and further orders, as this Hon’ble Court may deem fit and proper in the facts and circumstances mentioned above.”

2. Pursuant to the order dated 04.09.2023 passed by this Court, today, learned APP Mr.Bhargav Pandya produced medical report of the victim girl dated 06.09.2023 prepared by the panel of Doctors of GEMRS Medical College attached to General Hospital, Gandhinagar. The same is taken on record. For ready reference, the said report is reproduced hereunder:

“1. After reviewing history, lab reports, physical and radiological examination allied fitness done by gynecology, paediatrics, psychiatric and anesthesia department.

2. Gynecological examination, laboratory investigation and radiological examination (Antenatal USG) was carried out on 05.09.2023. Psychiatric reference, paediatrician reference, anesthesiologist reference was done on date: 06.09.2023.

3. As per sonography done on 05.09.2023, victim is having 19 weeks pregnancy.

4. After opinion & fitness of allied medical specialties, we above panel doctors are of the opinion that pregnancy be terminated with usual risk associated with such condition keeping in mind age of patient and gestational age."

3. As per the opinion given by the panel of Doctors in the form of the report dated 06.09.2023, the victim girl is carrying pregnancy of 19 weeks as on 05.09.2023 and no significant systemic abnormality has been detected. The victim also does not show signs of any associated pregnancy complications.

4. Learned Advocate Mr. Amit Chaudhary appearing for respondent no.6-original accused submitted that the original accused is ready to marry the victim and to accept all responsibilities of the victim as also of the child to be born. An affidavit to that effect has been filed and produced on record. He submitted that the dispute between the parties relates to caste and that the victim has never agreed for her medical termination of pregnancy and that the present petition has been filed only on account of the pressure of her parents. He accordingly prayed to reject the petition.

5. Considering the statement of the victim recorded under section 164 of Cr.P.C. as well as before the Police and medical report of the victim, this Court is of the considered opinion that victim girl is hereby permitted to terminate her pregnancy.

6. At this juncture, a reference to the judgment rendered by the Apex Court in case of **X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another reported in AIR 2022 SC 4917** would be apposite. In paragraphs-99 & 116, it has been observed as under;

“99. The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one’s body. The consequences of an unwanted pregnancy on a woman’s body as well as her mind cannot be understated. The foetus relies on the pregnant woman’s body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman’s body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, **the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.**

116. In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the state. **The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to**

reproductive healthcare or emotional and physical well- being also injures the dignity of women.”

7. In a recent decision rendered by the Apex Court in **Criminal Appeal arising out of S.L.P. (Cri.) Dy. No.33790 of 2023** dated **21.08.2023**, by relying upon the judgment rendered in *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another's* case (supra), the Apex Court ordered to conduct medical termination of pregnancy of the victim.

8. The respondent no.6 has filed an affidavit objecting to the termination of pregnancy of victim, this Court would give weightage to the wish and desire of the victim, though she is residing with her parents. There is not much significance to the objection raised by the respondent no.6 in view of the fact that the relationship between the respondent no.6 and the victim as on today does not have any legal recognition and victim is minor.

9. In this backdrop, it would be beneficial to refer to a recent decision of the Kerala High Court in the case **Aryamol Vs. Union of India and Ors.**, wherein in the facts and circumstances of the case, the High Court has gone to the extent of saying that the consent of the husband is not required in a case where the wife desires to terminate her pregnancy thereby giving respect to the desire of the woman and significance to her dignity.

10. The value that mother held in our society can also be recognized from the following verse of 'Skanda Purana':

नास्ति मातृसमा छाया नास्ति मातृसमा गतिः।
नास्ति मातृसमं त्राणं नास्ति मातृसमा प्रपा॥

(Skanda Purana: Chapter 6. 103-104)

अर्थात्- माता के समान कोई छाया नहीं, कोई आश्रय नहीं, कोई सुरक्षा नहीं। माता के समान इस विश्व में कोई जीवनदाता नहीं।"

11. If the victim does not want to continue with her pregnancy then this Court cannot compel her to continue her pregnancy.

12. In the result, the application is allowed. The respondent No.4 herein, Chief Medical Officer/ Medical Superintendent, Civil Hospital, Gandhinagar is directed to take necessary steps for undertaking the procedure of medical termination of pregnancy of the applicant-victim girl at the earliest possible time and in any case, within a period of one week from today. The respondent No.3-Police Inspector, Dehgam Police Station, Gandhinagar is directed to take necessary steps, on urgent basis, so that the procedure of medical termination of pregnancy of the victim girl could be undertaken and concluded within a period of one week from today. It is expected that the respondent-authorities concerned would take necessary care, sensitivity and caution so that the procedure of

medical termination of pregnancy of the victim girl could be undertaken smoothly keeping in mind the age as well as mental and physical health of the victim girl.

13. The respondents nos.2-4 are directed to do the needful to preserve the subsequent DNA Test Report by drawing tissues from the foetus for the purpose of using it as a piece of evidence in the ensuing trial.

14. With the above directions, the petition stands disposed of. Rule is made absolute. **Direct service TODAY** is permitted. A copy of this order be provided to the learned APP for onward communication and necessary action. Liberty to apply in case of difficulty.

MEHUL B. TUVAR

Sd/-
(SAMIR J. DAVE,J)