



2024:PHHC:069706



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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CWP-10431-2024

Date of Decision: 17.05.2024

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sumit Puri, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed invoking writ jurisdiction of this Court for issuance of a writ in the nature of Mandamus directing the respondents to terminate the pregnancy of the petitioner which is more than 15 weeks, in accordance with Medical Termination of Pregnancy Act, 1971.

Learned counsel appearing on behalf of the petitioner contends that the petitioner came in contact with Parbat Singh through one Neetu resident of village Saido Lehal, Khajala, Amritsar, who stated that Parbat Singh was a healthy and wealthy person and that he loved her (petitioner) and wanted to marry her. On 27.11.2023, when the petitioner left her house for her tuition, the said Neetu met the petitioner and stated that Parbat Singh is coming today. She further pressurized the petitioner to go with Parbat Singh, who took the petitioner with him to Sangrur by bus. On reaching Sangrur, petitioner noticed that Parbat Singh was unable to walk properly; thus she

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asked him that she does not want to marry him. But Parbat Singh kept her in captivity for a period of 15 days and he told her that he had purchased her by paying a sum of Rs.2,50,000/- to Neetu Kaur and as such, he would not let her go. Even though the petitioner was not at all ready to marry Parbat Singh, but he threatened her while saying that he would commit suicide and rope all her family members in some false criminal case. Under the threats and coercion extended by Parbat Singh, the petitioner performed marriage with him. After the marriage, the petitioner was subjected to mental as well as physical cruelty. Husband of the petitioner used to commit sexual assault upon her without her consent on several occasions. She was not allowed to contact her family members; and if she dared to, she was given severe beatings. Eventually, on 16.04.2024, when she noticed that her husband and other family members were asleep, the petitioner managed to escape from the house and while facing great hardships, she somehow managed to reach Amritsar and meet her parents. She was under such a great mental trauma due to atrocities done upon her by her husband and his family members that she was unable to disclose about what had happened to her. Later on the petitioner preferred a petition for divorce under Section 13 of the Hindu Marriage Act, bearing No.HMA-750-2024, which is pending in the Family Court at Amritsar. A complaint was also filed before the Police Authorities against Parbat Singh but no action has been taken thereupon. It is further submitted that as a result of sexual assault committed upon the petitioner by her husband, she got pregnant, however, the petitioner is not willing to bear and give birth to the child. The petitioner approached respondent No.4 for seeking

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termination of her pregnancy, however, the doctors orally refused to entertain the petitioner without the directions of the Court. The petitioner, thereafter, submitted a written representation in the Civil Hospital, but there also, she got no redressal of her grievance. Learned counsel for the petitioner submits that since the pregnancy is more than 15 weeks old, the petitioner is bound to approach this Court for seeking termination of the pregnancy in accordance with the statutory mandate. Hence, this petition.

3. Vide order dated 06.05.2024, the petitioner was directed to appear before office of Civil Surgeon, Amritsar on or before 10.05.2024 for her medical examination and other necessary tests. A report from the Board of Directors was also called for in this regard.

4. Pursuant to the said order, the petitioner appeared before the Medical Board and subjected herself to the medical examination. A report of Board of Directors has been received today alongwith the reply and the same is appended as Annexure R-1. The relevant extract of the said report as under:-

“Subject: Regarding constitution of medical board in case No.CWP-10431 of 2024 titled as Punjab and others. V/s State of

As per Letter No. DFWO/24/352-353 dated- (3/5/2024 Committee of two Specialist Doctors was constituted regarding MTP of.

As per document provided, committee members are of the opinion that as the age of the requesting is above 18 years old and age of gestation is 15 weeks 1 days (± 2 weeks) as per report of ultrasound dated 08.05.2024, so, she is eligible for MTP as per the guidelines of MTP Amendment Act 2021. The Board members



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are of the opinion that MTP should be performed timely to avoid any further complications.

Sd/-

Dr. Preetveen

*M.O. Specialist (MD-Anaesthesia
Gynae)*

Civil Hospital Amritsar

Sd/-

Dr. Chinky Thukral

M.O. Specialist (MD

Civil Hospital Amritsar

Sd/-

Dr. Neelam

*District Family Welfare Officer
o/o Civil Surgeon Amritsar*

Sd/-

Dr. Sumit Singh

*(Officiating Civil Surgeon)
Amritsar.*

Learned counsel for the petitioner refers to provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 wherein pregnancies are permitted to be terminated by a Registered Medical Practitioner. Section 3 of the Medical Termination of Pregnancy Act, 1971 is extracted hereinafter below:-

“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 may 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.

(2-A) 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.

(2-B) 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.

(2-C) 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.

(2-D) *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 pregnancy would*

involve such risk of injury to the health as is mentioned in subsection (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.”*

Learned counsel for the petitioner further refers to the provisions Section 3-B (a) and (c) of The Medical Termination of Pregnancy Rules, 2003, which read thus:

“3-B Women eligible for termination of pregnancy up to twenty-four weeks –

The following categories of women shall be considered eligible for termination of pregnancy under Clause (b) of Sub-Section (2) Section 3 of the Act, for a period of upto twenty four weeks, namely-



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- (a) *Survivors of sexual assault or rape or incest;*
(b) *XXXXXXXXXXXXXX*
(c) *change of marital status during the ongoing pregnancy
(widowhood and divorce);*
(d) *XXXXXXXXXXXXXX*
(e) *XXXXXXXXXXXXXX*
(f) *XXXXXXXXXXXXXX*
(g) *XXXXXXXXXXXXXX”*

That the continuation of the said pregnancy is likely to cause great pain to the petitioner, and to her it will be a persistent reminder of the atrocity to which she had been subjected to. Furthermore, taking into consideration physical and mental health of the petitioner, it would also cause a great mental harm to the wellbeing of the child. The anguish caused by the pregnancy is itself sufficient to constitute grave injury to the mental health of the petitioner and that it would rather be in the betterment and best interest of the petitioner that the pregnancy is permitted to be terminated. He further contends that the petitioner was subjected to counselling by the Counselor of District Child Protection Unit, Amritsar, whose observation is as under:

“Observation:- *During the counseling it is observed that adamant to get child aborted as she has no emotional connection with her child. Although she has been briefed to surrender the child before Child Welfare Committee for Adoption purpose but she denied for the same.”*

He further prays that in view of the opinion of the Medical Board as well as the observation of the Counselor coupled with the position of law,



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as extracted above, it would be in the larger interest of the petitioner that her pregnancy is ordered to be terminated in accordance with law.

I have heard the learned counsel appearing on behalf of the respective parties.

The Hon'ble Supreme Court in the matter of “**X Versus Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another**” reported as **(2023) 09 SCC 433**, has while considering the case regarding medical termination of pregnancy, held that:-

“76. Married women may also form part of the class of survivors of sexual assault or rape. The ordinary meaning of the word "rape" is sexual intercourse with a person, without their consent or against their will, regardless of whether such forced intercourse occurs in the context of matrimony. A woman may become pregnant as a result of non-consensual sexual intercourse performed upon her by her husband. We would be remiss in not recognising that intimate partner violence is a reality and can take the form of rape. The misconception that strangers are exclusively or almost exclusively responsible for sex-and gender-based violence is a deeply regrettable one. Sex-and gender- based violence (in all its forms) within the context of the family has long formed a part of the lived experiences of scores of women.

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78. It is not inconceivable that married women become pregnant as a result of their husbands having "raped" them. The nature of sexual violence and the contours of consent do not undergo a transformation when one decides to marry. The institution of marriage does not influence the answer to the question of whether a woman has consented to sexual relations.



If the woman is in an abusive relationship, she may face great difficulty in accessing medical resources or consulting doctors.

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80. Notwithstanding Exception 2 to Section 375 IPC, the meaning of the words "sexual assault" or "rape" in Rule 3-B(a) includes a husband's act of sexual assault or rape committed on his wife. The meaning of rape must therefore be understood as including marital rape, solely for the purposes of the MTP Act and any rules and regulations framed thereunder. Any other interpretation would have the effect of compelling a woman to give birth to and raise a child with a partner who inflicts mental and physical harm upon her.

81. In order to avail the benefit of Rule 3-B(a), the woman need not necessarily seek recourse to formal legal proceedings to prove the factum of sexual assault, rape or incest. Neither Explanation 2 to Section 3(2) nor Rule 3-B(a) require that the offender be convicted under IPC or any other criminal law for the time being in force before the pregnant woman can access an abortion. Further, there is no requirement that an FIR must be registered or the allegation of rape must be proved in a court of law or some other forum before it can be considered true for the purposes of the MTP Act. Such a requirement would be contrary to the object and purpose of the MTP Act. In fact, Explanation 2 triggers the legal presumption as to mental trauma "where any pregnancy is alleged by the pregnant woman to have been caused by rape".

In light of the above judicial pronouncement, reference needs to be made to certain pleadings in the case for seeking divorce as well as in the present petition. The same are extracted as under:

***Relevant pleadings of Divorce Petition:***

“8. That the respondents and his family members kept the petitioner confined in a bolted room and they mercilessly beat the petitioner off and on. As and when the petitioner requested the respondent to let her speak with her family members he refused to do so and stated that he will only allow the petitioner to talk to her parents if she will demand money from them. During this period, on many occasions, the respondent forcibly committed rape and unnatural sex with the petitioner after tying her hands and legs.”

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Relevant pleadings of present petition:

“8. That after the marriage, the husband took the petitioner to District Court Sangrur, where he forcibly took the signatures of the petitioner on certain papers and filed one protection petition. Even on the next day, the husband took the petitioner to the Court and under the threats of beatings, the petitioner was forced to give statement about the marriage in the court. During this period as and when the petitioner objected to any act of her husband and requested him that she wants to talk with her parents, the husband started beating the petitioner and he used to keep the petitioner confined in a closed room. A copy of the order dated 12.12.2023 passed by the Ld. Sessions Judge Sangrur is annexed herewith as Annexure P-2.

9. That the petitioner's husband and his family members kept the petitioner confined in a bolted room and they mercilessly beat the petitioner off and on. As and when the petitioner requested her husband to let her speak with her family members he refused to do so and stated that he will only allow the petitioner to talk to her parents if she will demand money from them. During this period, on many occasions, petitioner's husband forcibly



committed rape and unnatural sex with the petitioner after tying her hands and legs.

10. *That on 16.04.2024, the petitioner's husband and his family members were asleep and the petitioner noticed that the gate of the room of the petitioner was not bolted and she harnessed the courage and ran away from the house of petitioner's husband and with great difficulties she reached Amritsar to her parents.*

11. *That due to the occurrence of the above mentioned events, the petitioner is not in a good state of mind and has caused grave injury to her mental health. The parents of the petitioner provided her medical treatment and asked her about what has happened to her but the petitioner was unable to disclose about the cruel act and conduct of the respondent and his family members.*

12. *That on account of the above mentioned facts, the petitioner is unable to continue in the relationship of this forced marriage and slavery with her husband, since he has treated the petitioner with utmost cruelty. The petitioner is unable to bear the mental and physical torture and she is still depressed on account of the acts and conducts of her husband and his family members. The act and conduct of the petitioner's husband and his family members turned the life of the petitioner into a hell and the petitioner's health has been adversely affected and undermined. The petitioner apprehends danger to her life and limb at the hands of her husband and his family members, who are threatening to abuse the protection orders taken from the court under threat, pressure and coercion to take the petitioner again back to their house and keep the petitioner captive with them.”*

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In the said background and noticing that the petitioner is just 24 years of age and has a long career and life ahead to pursue her goals in life. It can also not be lost sight of the fact that the pregnancy is claimed as an outcome of unwanted relationship which she was forced to enter into. The petitioner is even not willing to continue the said relationship as is evident from the petition filed by her before the Family Court, Amritsar for seeking a decree of divorce. The child, if born, would not be a reminder of good memories, but shall be a reminder of trauma and agony she had to undergo. As an unwanted child, the member is also likely to either live a tormenting life or a life with no dignity. In either of the said situations, the mother as well as the child shall suffer social stigma and incarceration for rest of their lives. The same is not in the best interest of both- the mother as well as the child; and the petitioner already having expressed her unwillingness to bring up the child, it may not even be advancing the cause of the unborn, who will grapple to come to terms with life and will be subjected to maltreatment for no fault. Such decisions are tough, however, life is not just about being able to breathe – rather it is about being able to live with dignity. Where the denial of dignity and social as well as family acceptance or approval is ‘a writing’ on the wall, it compounds agony of the child and leads to greater injustice. Balance thus needs to be drawn to examine the overall wellbeing. Whether to shape the trauma of a victim or to prolong it by delivery of the child, who is to be only victimized. The choices thus reduce and it seems more prudent to allow the termination of pregnancy.

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There is also no reason for this Court to presume that the opinion given by the Medical Board concerned is not in good faith and as to how the continuation of this pregnancy would be in larger interest of the mother.

At this stage, the petitioner contends that Civil Hospital, Amritsar is nearer to the petitioner with highly and centrally equipped functional ICU and that the said Civil Hospital may be directed to conduct the medical termination of pregnancy in accordance with law.

Resultantly, the Civil Surgeon, Civil Hospital, Amritsar is directed to take all appropriate and necessary steps needed to carry out the medical termination of the pregnancy of the petitioner upon satisfaction of all such necessary conditions as prescribed in law.

The petitioner shall approach the abovementioned Hospital and/or the Authorities of the said Hospital on or before 21.05.2024 whereupon expeditious steps shall be taken for termination of the pregnancy in accordance with law.

The petitioner would be at liberty to espouse her financial status before the Authorities concerned and be entitled to the benefit under the prevalent schemes in accordance with the Rules.

Consequently, the present petition is allowed.

MAY 17, 2024*rajender***(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No