

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 8562 of 2024

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ABC (VICTIM) THROUGH VASAVA YAKUBBHAI CHHAGANBHAI
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR PV PATADIYA(5924) for the Applicant(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2,3,4
MS. MAITHILI MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 12/07/2024

ORAL ORDER

1. Heard learned advocate Ms. Sangita Chauhan for learned advocate Mr. P.V.Patadiya for the petitioner and learned Assistant Government Pleader Ms. Maithili Mehta for the respondent-State.
2. By way of this petition, the petitioner has prayed for the following reliefs :-

“A. Your Lordships may be pleased to admit and allow the present petition.

B Your Lordships may be pleased to issue appropriate writ or order or direction to the respondent authority to terminate the pregnancy of the petitioner who is aged 15 years and 09 Months, at the earliest, as the same being in the best interest of the victim, considering her very young age, physical health and incident of rape causing grave injury to her mental health and further be pleased to direct the respondent no. 3 to hand over, in scientific manner, the tissues drawn from the fetus for DNA identification to the Police Inspector, Utchal Police Station, Tapi for onward transmission of the same to the concerned Forensic Science

Laboratory, interest of justice;

(C) Pending admission hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents to conduct medical termination of pregnancy of the minor victim with two qualified surgeons including Gynecologist, Obstetrician and in presence of qualified physician with due care and precaution after carrying out necessary medical check-up, so as to avoid any likelihood of untoward harm to the physical or mental health of the minor victim, in the interest of justice;

(D) Any other and further relief/s which may be deemed fit by this Hon'ble Court be granted.

3. The matter was listed before this Court yesterday and this Court had passed the following order :-

1. Leave to amend.
2. Heard learned advocate Ms. Sangita Chauhan for learned advocate Mr. P. V. Patadiya for the petitioner.
3. Learned advocate Ms. Chauhan states that the present petitioner is a mentally challenged girl aged 15 years and 9 months and she was voyeured by the accused person and out of this relation, she has conceived and at present, she is pregnant by 26 weeks and 5 days (almost 27 weeks). Considering her mental condition as well as considering her age of 15 years and 9 months, the petition is preferred seeking permission to terminate the pregnancy.
4. The petition is preferred through her father and even as stated by learned advocate Ms. Chauhan, the family members of the petitioner are also ready and agreeable for termination. Considering the advanced stage of pregnancy as well as considering the age of the victim girl, the medical examination of the girl is required to take place at the earliest.

5. Considering the age of the victim girl as well as considering the fact that she is a mentally challenged person as well as considering the fact that she comes from tribal area where the nearest government medical hospital having better hospitality would be at SMIMER Hospital & Medical College, Surat. The Medical Superintendent of SMIMER Hospital & Medical College, Surat is directed to examine victim girl today itself and to submit a clear report about whether at this age and considering the fact that the victim girl is a mentally challenged person and she is only 15 years of age, will it be safe to terminate the pregnancy of the victim girl by carrying out necessary procedure/surgery at the earliest. As far as possible, the concerned Doctor may try to submit the report by tomorrow morning.
6. Learned advocate Ms. Chauhan assures before this Court that the petitioner shall reach Surat before today evening and will cooperate in the medical examination which may be carried out by the expert panel of gynecologist doctors of SMIMER Hospital & Medical College, Surat where she may be examined by the expert doctor in the SMIMER Hospital & Medical College, Surat and a clear medical report be submitted by tomorrow morning through E-mail to the learned APP. Copy of which may also be made available to the learned advocate for the petitioner for her perusal.
7. In view of above, issue NOTICE to the respondents returnable on 12.07.2024. Learned APP waives service of notice for and on behalf of the respondent – State.
8. Copy of this order be served upon the Medical Superintendent of SMIMER Hospital & Medical College, Surat through E-mail by office of the learned Public Prosecutor.
9. The matter shall be taken up tomorrow at 11:00.
Direct service is permitted TODAY.
4. Pursuant to the aforesaid order, today the Professor and Head of Department, Smimer Hospital, Surat along with two other professors of Smimer Hospital, Surat submitted a report pursuant to

the Court's Order which reads as under:-

Obstetrics & Gynec Department,
SMIMER Date 12/07/2024

To Honourable Justice,
The High Court of Gujarat,
Ahmedabad

(Through proper channel)

Subject. Opinion of expert panel of gynecologist for termination of pregnancy

Respected Sir,

With reference to letter from (1) The High Court of Gujarat dated on 11/07/2024, CC no 11824006240537/2024, (2) SMIMER/HOSP/IN/No 1885 dated 12/07/2024, victim is 15 years old girl with mild intellectual disability (IQ-50-69%). As per her USG ANC report dated on 11/07/2024, she is having 28 weeks of pregnancy at present(today). As victim's age is less than 18 years, continuation of pregnancy may be harmful physically as well as psychologically for her. As victim and her parents want termination of pregnancy, according to the MTP act, considering her mental health and age, medical termination of pregnancy can be done with due risks associated with termination at 28 weeks of pregnancy.

Risk and complications associated with termination of pregnancy at 28 weeks, includes retained products of conception, bleeding, infection, uterine rupture etc. which may need surgical intervention (preterm caesarean section) and also can cause psychological complications. The mortality(death) risk is 0.6/100000.

Thanking you,

Dr. Ashvin Vachhan
Prof. & Head

Dr. Shraddha Agrawal
Professor

Dr. Jitesh Shah
Professor

5. Considering the facts that the report indicates that the mortality risk is only 0.6% as well as considering the fact that the minor girl is aged about 15 years and 9 months and she is mentally challenge girl coming from very lower strata of the society and therefore, considering her family background as well as mental condition couple with the fact that she is mentally challenge person and therefore, there are all probability that the girl would not even carrying stigma but, will face lot many problems in raising the child even in future and also considering the fact that the age of the foetus is almost 28 weeks as per the medical report. Without elaborating any further reasons looking to the fact that today the girl is running against the time, the concerned Head of Department of Smimer Hospital, Surat is directed to perform necessary surgery/procedure for termination of pregnancy of the victim girl by ensuring all the safety protocol as far as possible and which is available with the hospital like managing for blood and any other expert doctors if they are required while performing the procedure

looking to the age and health of minor girl and such surgery/procedure is required to take place at the earliest without delaying if any further.

6. I am told that at present the victim girl is at Surat only and she is already admitted in the hospital and therefore, the order may be communicated orally also through the concerned doctors, so as to ensure that the surgery/protocol for MTP take place at the earliest.

7. Further, I am told that as the hospital is run by The Surat Municipal Corporation and told by learned advocate Ms.Chauhan that as the hospital is run by Surat Municipal Corporation and there is likelihood that the hospital may certain charges from the petitioner. However, learned APP upon inquiry submits that there are certain beneficial scheme by the State Government are already in place and therefore as far as possible the victim girl shall be covered under one or more beneficial scheme to ensure that the financial burden of the girl is reduced to maximum possible extent. Considering the financial condition of the victim girl and her parents, the Smimer hospital is also directed to consider the case of the petitioner as far as the charges are concerned sympathetically

and may try to provide as much financial assistance under various Government beneficial scheme which the petitioner is entitled to.

8. With the aforesaid directions, this petition is allowed. The respondent No.3 and its expert panel doctors are directed to perform the surgery/procedure for terminating the pregnancy of the girl at the earliest. Further, it may take time to reach the copy of the order to the concerned hospital, learned APP is requested to communicate to the concerned hospital authority to ensure that the termination of pregnancy take place at the earliest. The copy of this order to be communicated to the concerned hospital through e-mail also.

BEENA SHAH

(NIRZAR S. DESAI,J)