HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NO: 17358 OF 2024

Between:

Chakali Bhagyamma, w/o Late Chakali Shekar, Aged about 38 years, occ. Domestic Worker, R/o 1-101, Kodgal Jadcherla Mandal, Kodgal, Mahabubnagar District, Currently residing at Kacheguda, Hyderabad Telangana

...PETITIONER(S)

AND

1. State Of Telangana, Represented by its Secretary, Department of Health, Medical and Family Welfare Secretariat Buildings, Hyderabad.
2. The State of Telangana, Represented by its Special Secretary, Department of Women Development & Child Welfare Secretariat Buildings, Hyderabad.
3. Director, Public Health and Family Welfare, DM and HS Campus, King Koti, Hyderabad
4. Superintendent, Gandhi Hospital, Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of a Writ of Mandamus declaring the inability of the Respondent No 4 in not taking steps to effect a medical termination of pregnancy of the minor child of the petitioner despite the medical reports as arbitrary and unfair to the physical and mental wellbeing of the minor child and consequently direct the Respondents No. 3 and 4 to forthwith constitute a Medical Board of gynecologists and radiologists to examine the minor child of the petitioner and take steps to arrange for a medical termination of pregnancy as per the provisions of the Medical Termination of Pregnancy Act 1971 as amended in 2021.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents No 3 and 4 to take steps to forthwith constitute a Medical Board of gynecologists and radiologists to medically examine the minor child of the petitioner including the consequence of effecting a termination of pregnancy.

Counsel for the Petitioner: SRI VASUDHA NAGARAJ

Counsel for the Respondent No.1, 3 & 4: GP FOR MEDICAL HEALTH

Counsel for the Respondent No.2: GP FOR WOMEN & CHILD

The Court made the following: ORDER

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.17358 OF 2024

ORDER : (ORAL)

This writ petition is filed by the petitioner viz., Chakali Bhagyamma aggrieved by the action of respondent No.4 - the Superintendent, Gandhi Hospital, Hyderabad, in not taking steps to effect medical termination of pregnancy of her minor daughter (victim girl) as being illegal, arbitrary and unfair to the physical and mental wellbeing of the victim girl and contrary to the provisions of the Medical Termination of Pregnancy Act 1971 as amended in 2021; and for a consequential direction to respondent Nos.3 and 4 - the Director, Public Health and Family Welfare, DM & HS Campus, King Koti, Hyderabad and the Superintendent, Gandhi Hospital, Hyderabad, respectively, to forthwith constitute a Medical Board for examination of the minor victim girl and take steps for medical termination of her pregnancy.

2. It is submitted that the victim girl is twelve (12) years old and she is represented by her mother, the petitioner herein. The petitioner is a single mother and her husband died about three

(3) years ago. The petitioner is eking out her livelihood as a domestic worker and living along with her three (3) daughters. About few days back, the petitioner noticed that her daughter (victim girl) was not getting her menstrual period for more than five (5) months. Then, the petitioner took the victim girl to CC Shroff Hospital, a private nursing home, Hyderabad, for doctor consultation. After consultation, the petitioner was shocked to know that the victim girl is pregnant.

3. It is stated that on enquiry with the victim girl, it was revealed that one Vijay Kumar through her friend took her out a few times, gave her juice and brought her back; one day, he took her to a deserted area at Vinayaknagar, had sex with her and threatened her not to reveal the same to anyone; the perpetrator repeated such acts several times; he shared her phone number with four of his friends; they also called her, came to the house, forcibly took her, had sex with her and dropped her back at her home; the victim girl was unable to share the same with the petitioner or anybody as she was threatened that she and her family will be harmed.

4. It is submitted that the petitioner lodged complaint dated 24.06.2024 and a Zero F.I.R. in Crime No.0-01/2024 was registered for the offences under Sections 376(DB), 376(AB), 372(2)(n) of the Indian Penal Code 1860 (for short 'IPC') and Section 5(m) and 5(g) read with Section 6 of the Prevention of Children from Sexual Offences Act 2012 (for short 'POCSO Act') by the Kachiguda Police Station, Hyderabad. Later, it was transferred to the jurisdictional Police Station i.e., Neredmet Police Station, Rachakonda Commissionerate, where it was numbered as F.I.R. No.418 of 2024 dated 25.06.2024 for the offences under Sections 376DB, 376AB, 376(2)(n) of IPC, 5(m), 5(g) read with section 6 of the POCSO Act and taken up investigation.

5. It is further submitted that subsequently the victim girl was taken to Gandhi Hospital, Secunderabad, and was examined on 26.06.2024. The tests and scans revealed that the victim girl had pregnancy of 26 weeks. The Doctors in Gandhi Hospital informed the petitioner that since the victim girl had advanced pregnancy of beyond 24 weeks, the same cannot be terminated under the provisions of the Medical Termination of Pregnancy (Amendment)

Act 2021 (for short 'MTP Act'). In such circumstances, the petitioner approached this Court.

6. This Court by the order dated 04.07.2024 directed respondent No.4 to constitute a Medical Board and examine the victim girl with regard to gestation period of her foetus, feasibility to terminate her pregnancy and submit a report to this Court today by 2:15 p.m., in a sealed cover without disclosing identity of the victim girl. Accordingly, respondent No.4 constituted a Medical Board and submitted the report dated 05.07.2024 in a sealed cover. The Medical Board opined that procedure for termination of pregnancy can be carried subject to the following risk:

> "i) Cervical trauma, uterine perforation or tear, incomplete evacuation, haemorrhage, infection (more common with second trimester MTP than first trimester which has a risk of less than 1%)
>
> ii) Chance of failed termination leading to major surgery (hysterotomy)
>
> iii) The relative mortality risk of abortion approximately doubles for each two weeks after 8 weeks of gestation (Williams gynaecology 4th edition, page 155)

iv) Lat sequelae like PID Infertility, ectopic pregnancy, incompetent os, adherent placenta in the subsequent pregnancy, Ashermann syndrome"

7. Heard Ms. Vasudha Nagaraj, learned counsel for the petitioner, learned Assistant Government Pleader for Medical, Health and Family Welfare appearing for respondent Nos.1, 3 and 4, and learned Assistant Government Pleader for Women Development and Child Welfare appearing for respondent No.2, and perused the material on record.

8. The learned Assistant Government Pleader for Women and Child submitted that as the gestational period of foetus is more than 24 weeks, termination of pregnancy may not be safe for the life of the victim girl; the foetus of the victim girl is in a healthy condition and that the State will take necessary care to maintain the to be born child. It is submitted that in similar situation, this Court in W.P. No.32872 of 2023 dated 06.12.2023 refused to accept termination of pregnancy.

9. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in **A (Mother of X) v. State of Maharashtra**[1], wherein it was held that paramount consideration is the consent of the victim girl for abortion.

10. It is submitted that the victim girl has choice to carry pregnancy or to terminate it and the same is one of the facets of Fundamental Rights to Life guaranteed under Article 21 of the Constitution of India.

11. It is submitted that the victim girl was sexually abused and raped by several persons and if she is made to continue with the pregnancy, it will cause mental anguish to her. It is not only the victim, but also the child born will face physical and mental trauma; further, there is no guarantee that the mother and foetus will have good health if the pregnancy is continued and eventually baby is delivered.

12. In **A (Mother of X)'s case (Supra 1),** a 14 years old victim girl sought termination of her pregnancy. The Hon'ble

[1] 2024 SCC OnLine SC 608 and 835

Supreme Court on consideration of opinion of the Medical Board, Dean of Municipal Medical College, Sion, Mumbai, that gestation age of the foetus was 29.6 weeks, which is beyond the period of 24 weeks, and continuation of pregnancy will negatively impact the physical and mental well-being of the victim girl, by the order dated 22.04.2024 directed the Medical Board to carry out the procedure of termination of pregnancy. It appears, subsequently, on an application filed for review of the said order, it was reviewed by the order dated 29.04.2024.

13. In the review application, the Supreme Court has taken note of the subsequent report filed by the Medical Board; when it was pointed out that the parents of the victim girl were changing their versions and on 24.04.2024, the father and mother of the victim girl gave in writing that they gave permission for termination of medical pregnancy and even after giving injection for termination of pregnancy if the baby is born alive, they would give the baby for adoption. Due to changing of statements by the parents of the victim girl, the Medical Board of Sion Hospital, informed the same to the learned Additional Solicitor General of

India and later taking into consideration that the minor girl is ready and willing to accept decision of her parents, order dated 22.04.2024 was recalled.

14. In **A(Mother of X)'s case** (Supra 1), the Hon'ble Supreme Court held as under in paragraph Nos.32, 33, 34 and 35:

> "**Primacy of the pregnant person's consent in abortion**
>
> **32**. As noted above, the order of this court allowing 'X' to terminate her pregnancy is recalled. This decision is made in light of the decisional and bodily autonomy of the pregnant person and her parents. The MTP Act does not allow any interference with the personal choice of a pregnant person in terms of proceeding with the termination. The Act or indeed the jurisprudence around abortion developed by the courts leave no scope for interference by the family or the partner of a pregnant person in matters of reproductive choice.
>
> **33.** As stated above, the role of the RMPs and the medical board must be in a manner which allows the pregnant person to freely exercise their choice. In the present case, the guardians of 'X', namely her parents,

have also consented for taking the pregnancy to term. This is permissible as 'X' is a minor and the consent of the guardian is prescribed under Section 3(4)(a) of the MTP Act.

34. In *Suchita Srivastava v. Chandigarh Admn.* [(2009) 9 SCC 1], a three-judge Bench of this Court has held that the right to make reproductive choices is a facet of Article 21 of the Constitution. Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount. The purport of this Court's decision in Suchita Srivastava (supra) was to protect the right to abortion on a firm footing as an intrinsic element of the fundamental rights to privacy, dignity and bodily integrity as well as to reaffirm that matters of sexual and reproductive choices belong to the individual alone. In rejecting the State's jurisdiction as the parens patriae of the pregnant person, this Court held that no entity, even if it is the State, can speak on behalf of a pregnant person and usurp her consent. The choice to continue pregnancy to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone.

35. In the present case the view of 'X' and her parents to take the pregnancy to term are in tandem. The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution.

Therefore, where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor while deciding the termination of the pregnancy.

Conclusion

36. In the facts and circumstances of this case, we issue the following directions:

(i) The Sion hospital shall bear all the expenses in regard to the hospitalization of the minor over the past week and in respect of her re-admission to the hospital for delivery as and when she is required to do so; and

(ii) In the event that the minor and her parents desire to give the child in adoption after the delivery, the State Government shall take all necessary steps in accordance with the applicable provisions of law to facilitate this exercise. This shall not be construed as a direction of this Court binding either the parents or the minor and the State shall abide by the wishes as expressed at the appropriate stage. "

15. It is represented by the learned counsel for the petitioner that mother of the victim girl has given consent for performing procedure of termination of pregnancy.

16. In **A(Mother of X)'s case** (Supra 1), the Hon'ble Supreme Court held as under in paragraph No.37:

> **37.** In light of the issues which arose before this Court we record our conclusions as follows: (i) The MTP Act protects the RMP and the medical boards when they form an opinion in good faith as to the termination of pregnancy; (ii) The medical board, in forming its opinion on the termination of pregnancies must not restrict itself to the criteria under Section 3 (2-B) of the MTP Act but must also evaluate the physical and emotional well being of the pregnant person in terms of the judgment; (iii) When issuing a clarificatory opinion the medical board must provide sound and cogent reasons for any change in opinion and circumstances; and (iv) The consent of a pregnant person in decisions of reproductive autonomy and termination of pregnancy is paramount. In case there is a divergence in the opinion of a pregnant person and her guardian, the opinion of the minor or mentally ill pregnant person must be taken into consideration as an important aspect in enabling the court to arrive at a just conclusion."

17. By placing reliance on the aforesaid judgment of the Hon'ble Supreme Court in **A(Mother of X)'s case** (Supra 1), observations in paragraph Nos.32 to 35 and conclusions in paragraph No.37(iv), learned counsel for the petitioner submitted that consent of the victim girl is paramount.

18. In the opinion of this Court, by taking into consideration the provisions of the MTP Act, more particularly, Explanation 2 of Section 3(2) of the MTP Act and the victim girl being 12 years old, there cannot be any doubt that the victim girl would be subjected to mental trauma if she is forced to continue pregnancy against her wish; the mother of the victim girl is stated to be a domestic worker. If the victim girl is not allowed to terminate her pregnancy, she has to continue pregnancy until the child is delivered and may have to face not only physical and mental health issues but also social stigma. It has been recognized by the various Courts including the Hon'ble Supreme Court, as discussed above, that right to choice of a pregnant woman to continue pregnancy or terminate it is one of the facets of fundamental rights guaranteed under Article 21 of the Constitution of India.

19. For the aforesaid reasons, the writ petition is allowed with the following conditions:

1. Respondent No.4 - the Superintendent, Gandhi Hospital, Hyderabad, is directed to take consent of the victim girl or her mother for termination of pregnancy of the victim girl.
2. If the victim girl or her mother gives consent for termination of pregnancy through medical procedure, respondent No.4 - the Superintendent, Gandhi Hospital, Hyderabad, shall forthwith admit the victim girl, conduct medical examination and by taking all necessary precautions, terminate pregnancy of victim girl medically or through surgical procedure as may be required, within 48 hours.
3. Termination of pregnancy or surgical procedure, as the case may be, shall be performed by a senior most Gynaecologist of respondent No.4 Hospital.

4. Respondent No.4 is directed to collect the tissue and blood samples of the fetus for conducting DNA and other tests.

5. The Investigating Officer while conducting investigating in F.I.R. No.418 of 2024 dated 25.06.2024 shall forward the tissue and blood samples of the victim girl to the concerned Forensic Laboratory for DNA and other relevant medical tests.

6. The blood samples and results of medical tests shall be preserved for the purpose of trial.

7. In case, the victim girl applies for victim compensation, the Legal Services Authority, High Court for the State of Telangana, shall render necessary assistance to the victim girl and ensure that compensation as provided under law is adequately granted.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed.

SD/- N. CHANDRA SEKHAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Department of Health, Medical and Family Welfare Secretariat Buildings, Hyderabad, State Of Telangana.
2. The Special Secretary, Department of Women Development & Child Welfare Secretariat Buildings, Hyderabad, State of Telangana.
3. The Director, Public Health and Family Welfare, DM and HS Campus, King Koti, Hyderabad.

4. The Superintendent, Gandhi Hospital, Hyderabad
5. One CC to SRI VASUDHA NAGARAJ, Advocate [OPUC]
6. Two CCs to GP FOR MEDICAL HEALTH, High Court for the State of Telangana at Hyderabad [OUT]
7. Two CCs to GP FOR WOMEN & CHILD, High Court for the State of Telangana at Hyderabad [OUT]
8. Two CD Copies

BSR

CC TODAY

HIGH COURT

DATED: 05/07/2024

ORDER

WP.No.17358 of 2024

ALLOWING THE WRIT PETITION,

WITHOUT COSTS

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MMA

05/7/2024