2025:CGHC:61963

PAWAN KUMAR JHA
Digitally signed by PAWAN KUMAR JHA
Date: 2025.12.22 13:02:26 +0530

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 6674 of 2025

- Xyz (Minor) Through Legal Guardian

... Petitioner

versus

1. State Of Chhattisgarh Through- Secretary, Department Of Public Health And Welfare, Mahanadi Bhawan New Raipur (C.G.)
2. Chairman State Medical Board Raipur Distt- Raipur (C.G.)
3. The Chief Medical And Health Officer Raipur Distt- Raipur (C.G.)
4. The Dean Bhim Rao Ambedkar Memorial Hospital Jail Road, Raipur Distt- Raipur (C.G.)
5. The Gynecologist Department Of Obstetrics And Gynecology Dr. B.R.A.M. Hospital Raipur Distt- Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. B.L. Dembra, Advocate with Mr. C.R. Sahu, Adv. and Mr. Vinod Kumar Dewangan, Adv.
For Respondent-State	:	Mr. Shaleen Singh Baghel, Dy. Govt. Adv.

Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

22/12/2025

1. A minor victim of forcible sexual intercourse/rape by accused has filed this writ petition through her natural guardian seeking the following reliefs:-

> “10.1. The Hon’ble Court may kindly be pleased to allow the petition permitting the petitioners for abortion of womb of her minor daughter, who is carrying about 25 weeks of fetus in her uterus.
>
> 10.2. The Hon’ble Court may kindly further be pleased to direct the respondent authorities to provide all the precautions, measures and care while terminating pregnancy of her minor child to save her life.
>
> 10.3 Any other relief which this Hon’ble Court may deems fit and proper looking to the facts and

> circumstances of the case may also be awarded to the petitioner including the cost and expenses of this petition."

2. Learned counsel for petitioner submits that petitioner was subjected to rape. After noticing the size of stomach, mother of petitioner asked about it, at that time she narrated that on false assurance of marriage she developed physical relationship with a person and became pregnant. She was taken to hospital. Upon examination, the doctor diagnosed petitioner carrying pregnancy and average gestational age to be 25 weeks. Petitioner being minor if for any reason has to deliver a child it will cause adverse impact on her mind and therefore, this petition is filed seeking permission of this Court for termination of pregnancy.

3. When the case came up for hearing before this Court on 19.12.2025 this Court directed the Hospital Superintendent, Pt. J.N.M. Medical College and Dr. B.R. Ambedkar Memorial Hospital, Raipur to submit report with opinion with regard to medical termination of pregnancy of petitioner, upon which respondent-State has produced the copy of report submitted by Medical Board, Raipur (C.G.). In the report/opinion, team of doctor have opined that minor is fit for MTP, termination of pregnancy can be allowed. The gestational age of foetus is diagnosed to be of 25 weeks (one week +/-).

4. I have heard learned counsel for the parties and perused the documents available in record.

5. So far as the proceedings for a termination of pregnancy is concerned, it is governed by the provisions of the Medical Termination of Pregnancy Act, 1971. Section 3 of the said Act provides for termination of pregnancy by registered medical practitioner under the circumstances as provided therein. For ready reference Section 3 of the said Act is reproduced hereinunder:

> "**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.

[1][(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.

(2A) 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.

(2B) 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.

(2C) 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.

(2D) 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 a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant womans 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 [2][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.

6. From the aforesaid provisions, it is evidently clear that it is not that termination of pregnancy is not impermissible at all. It is permissible in the given circumstances as is envisaged under Section 3. Undoubtedly, in the instant case the minor is just around 17 years of age i.e. too young for undergoing the trauma of pregnancy. Moreover, the team of Doctors have also found that the victim was just around of child of average age and built. The continuation of the pregnancy can lead to complication at a later stage both so far as the physical condition of the victim as also the psychological and mental condition is concerned. In the case of **Suchita Srivastav & Another v. Chandigarh Administration** reported in **(2009) 9 SCC 1** the Hon'ble Supreme Court in paragraphs No. 36 & 37 has held as under:

> "**36.** Courts in other common law jurisdictions have developed two distinct standards while exercising "parens patriae" jurisdiction for the purpose of making reproductive decisions on behalf of mentally retarded persons. These two standards are the "best interests" test and the "substituted judgment" test.
>
> **37.** As evident from its literal description, the "best interests" test requires the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of the other stakeholders such as guardians or the society in general. It is evident that the woman in question will need care and assistance which will in turn entail some costs. However, that cannot be a ground for denying the exercise of reproductive rights."

7. Likewise, again in the case of **X vs. Union of India & others** reported in **(2016) 14 SCC 382** in paragraph No. 13 it has been held as under: -

> "**13.** Having perused the medical report (relevant extracts whereof have been reproduced hereinabove), we are satisfied that a clear finding has been recorded by the Medical Board, that the risk to the petitioner of continuation of her pregnancy can gravely endanger her physical and mental health. The Medical Board has also expressed an advice that the patient should not continue with the pregnancy. In view of the findings recorded in Para 6 of the report, coupled with the recommendation and advice tendered by the Medical Board, we are satisfied that it is permissible to allow the petitioner to terminate her pregnancy in terms of Section 5 of the Medical Termination of Pregnancy Act, 1971. In view of the above, we grant liberty to the petitioner, if she is so advised, to terminate her pregnancy."

8. The aforesaid judgment in the case of **"X v. Union of India & others"** the request for termination of pregnancy was in a case where the pregnancy was of more than 20 weeks. The Hon'ble Supreme Court further in the recent past have permitted termination of pregnancy in matters, where the pregnancy was more than 20 weeks. A few judgments of the Hon'ble Supreme Court are reported in **2017 (3) SCC 458 (X and others v. Union of India and others), 2017 (3) SCC 462 (Meera Santosh Pal and others v. Union of India and others), AIR 2017 SC 3931 (Tapasya Umesh Pisal v. Union of India and others) and AIR 2017 SC 4037 (Mrs. A v. Union of India and others)**. In all these cases the age of the foetus were more than 20 weeks and taking into consideration the over all condition of the victim, the Hon'ble Supreme Court permitted termination of pregnancy.

9. A fact which cannot be brushed aside and which came up for consideration before this Court was the age of the victim. Admittedly it was just around 17 years of age. The child is just about reaching the age of adult and at that stage of the life, if the victim is permitted to undergo the entire process of pregnancy and delivery, it can lead to great physical, mental and psychological effect, not only on the victim, but also so far as the fetus is concerned.

10. This High Court in **WPC No. 270/2018 (Ku. Pooja Mandavi v. State of Chhattisgarh and others)** decided on 02.02.2018 in paragraph No. 23 in a similar situation allowing the present writ petition has held as under:-

> "**23.** Taking into consideration the entire facts including her age (13 years) and circumstances what has been stated by the victim, her gestational age, judicial precedents, taking into consideration her adolescent pregnancy and risk involved in childbirth, medical condition of the victim / petitioner, as she is suffering anemia and sickle cell (trait), considering the fact that the fetus if allowed to born, would have a limited life span with serious handicaps, and that as per Explanation I appended to sub-section (2) of Section 3 of the Act of 1971 mental agony of a rape victim (petitioner) has to be treated as a case of grave injury, particularly taking into consideration that it is in the best interests of the victim alone which has to be kept in view and considering the provisions of Sections 3 and 4 of the Act of 1971 and Explanation I that the termination of pregnancy is immediately necessary to save the life of a pregnant girl like the petitioner herein, in the interest of justice, it would be proper to direct that a team of five doctors shall consider the feasibility of termination of pregnancy at this gestational age. Accordingly, the writ petition is allowed with following directions: -
>
> 1. The petitioner to remain present at Dr. B.R. Ambedkar Government Medical College, Raipur on 4-2-2018 so that termination of pregnancy can be carried out on 5-2-2018 or on the next day by a team of doctors consisting of Dean, Medical College; two senior gynecologists available in the hospital; one Radiologist; one Clinical Psychiatrist and one Anesthetist. The Dean of Dr. B.R. Ambedkar Government Medical College, Raipur is directed to make all such arrangements if the petitioner and her mother give consent in the prescribed proforma under the Act of 1971 and the rules made thereunder.
>
> 2. The termination of pregnancy of the petitioner will be supervised by the above-stated Medical Board who shall maintain complete record of the procedure which is to be performed on the petitioner for termination of her pregnancy. 3. The District Collector, Narayanpur shall ensure safe journey of the petitioner along with her parents from Narayanpur to Dr. B.R. Ambedkar Hospital, Raipur on 4-2-2018 and all necessary expenses will be borne by the State in this regard.
>
> 4. On being informed, the District Collector, Raipur shall make 14 necessary arrangements for journey of the petitioner and her parents from Raipur to Narayanpur after her discharge. 5. The petitioner will be allowed all medical and requisite facilities till she is medically fit even after the termination of pregnancy."

11. Given the aforesaid facts and circumstances of the case and further referring to the judgment of the Hon'ble Supreme Court in the case of **A vs. Union of India** reported in **2018 (14) SCC 75** and also **Sarmishtha Chakrabortty and Another v. Union of India** reported in **2018 (13) SCC 339** permitted termination of pregnancy at the stage where the victim was carrying

pregnancy for around 26 weeks. The Hon'ble Supreme Court in the case of **Murugan Nayakkar v. Union of India and others** reported in **2017 SCC Online 1092,** considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by the Court allowed the termination of pregnancy.

12. Pursuant to order passed by this Court on 19.12.2025, victim was examined by team of doctors consisting of seven-members on 20.12.2025 (Medical Board, Raipur). In the report submitted in Form-D, the Medical Board has opined that termination of pregnancy can be allowed as per the order by the Court.

13. The victim of rape must be given that much of liberty and right to decide whether she should continue with the pregnancy or she should be permitted to terminate the pregnancy.

14. For the foregoing reasons, this writ petition seeking permission for medical termination of pregnancy of petitioner, is allowed. Petitioner is permitted to approach Hospital Superintendent, Pt. J.N.M. Medical College & Dr. B.R. Ambedkar Memorial Hospital, Raipur as also Respondent No. 5, who in turn shall ensure that pregnancy of petitioner be terminated after completing all the other requisite formalities required for the same. Hospital Superintendent, Pt. J.N.M. Medical College, Raipur is further directed to issue instructions for terminating pregnancy of the petitioner under the supervision of two registered medical practitioners including Specialist Doctors in the field i.e. Department of Gynaecology following the provisions under the Act of 1971. Hospital Superintendent, Pt. J.N.M. Medical College, Raipur is also directed to ensure that the DNA sample of the foetus shall also be taken and preserved for further evidence of criminal case, if any.

15. Let this exercise be carried out without any further delay and the petitioner is directed to approach before the Hospital Superintendent, Pt. J.N.M. Medical College, Raipur on **23.12.2025** for the aforesaid purpose. Hospital Superintendent, Pt. J.N.M. Medical College, Raipur shall further take all necessary steps. The Government Counsel is also directed to intimate the Hospital Superintendent, Pt. J.N.M. Medical College, Raipur as regards the next course of action that has to be taken.

16. The examination report submitted before this Court by State counsel in original with regard to opinion of Medical Board on MTP of petitioner, shall be made part of record.

Certified copy as per rules.

Sd/-

(Parth Prateem Sahu)
JUDGE

pwn