

Date Of Decision : 18.01.2021 Surekha ... vs State Of Nct Of Delhi Through Department ... on 18 January, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P. (CRL) 69/2021

Date of decision : 18.01.2021

SUREKHA GAUTAM KHOBRAGADE Petitioner

Through: Ms.Vrinda Gorver, Advocate
with Mr.Soutik Banerjee and
Mr.Aakarsh Kamra, Advocates
with the petitioner, her daughter
Ms.X and her spouse.

versus

STATE OF NCT OF DELHI THROUGH DEPARTMENT OF
HEALTH AND FAMILY WELFARE & ANR. ..Respondents

Through: Mr. Avi Singh, ASC with SI
Jasbir Singh.
Mr.Tarun Bhadana, Advocate
for R-2

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, her daughter Ms. 'X', as well as her spouse all are present through Video Conferencing with the learned counsel for the petitioner.

2. The petitioner, who is the mother of Ms. 'X', born on 15.2.2004 seeks directions to the respondent No.1 to carry out the medical procedure for terminating the pregnancy of Ms.'X' which is causing grave harm and threats to her physically, psychologically and emotionally with it having been submitted that the minor Ms. 'X' aged Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.01.2021 18:50:23 This file is digitally signed by PS to HMJ ANU MALHOTRA.

16 years is a student in a school in Delhi and that she had been raped as a consequence of which a Zero FIR dated 9.1.2021 was registered at Police Station Mehrauli (South) under Section 376 of the Indian Penal Code, 1860 read with Section 6 of the POCSO Act, 2012. Vide order dated 14.1.2021 taking into account the factum that it has been submitted that the petitioner's daughter had an

intrauterine pregnancy of 24 weeks as on the date 9.1.2021, it was considered appropriate that a medical evaluation both physical and psychological of the minor daughter of the petitioner Ms. 'X', was conducted and the Medical Superintendent of the LNJP Hospital was directed to constitute a Medical Board comprising of a Gynecologist and Psychiatrist to evaluate and give their opinion in relation to the Medical Termination of the Pregnancy and the safety thereof.

3. The said report pursuant to the order dated 14.1.2021 as forwarded by the Dr. S.N.Basna of the DMS Medical Board, LNJP Hospital, New Delhi, which forwards the report of the Director Professor Gynaecology Dr. Y. M. Mala, Sr. Specialist Gynaecology Dr. Rachna Sharma and Associate Professor Psychiatry Dr. Mahima Kapoor has stated to the effect:

"On examination and review of Ultrasound report (AIIMS) dated 09.01.2021, the patient appears to be around 26 weeks pregnant.

On Psychiatry Evaluation, it is found that continuation of pregnancy will lead to a considerable mental trauma to the patient.

Patient and her mother have been explained about high risk of termination of pregnancy in view of advanced pregnancy, young age (Minor) and mild anemia. They have been explained about complications like excessive bleeding and Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.01.2021 18:50:23 This file is digitally signed by PS to HMJ ANU MALHOTRA.

failure of medical methods requiring surgical procedure (Hysterotomy). Termination might end in live baby, if survives may have long term consequences.

There are no standard national guidelines regarding the method of termination of pregnancy beyond 20 weeks. If the patient and guardian are willing to take the high risks mentioned above, they may opt for termination of pregnancy.", which indicates that the minor child of the petitioner is now around 26 weeks in the family way. Though on psychiatric evaluation it was found that the continuation of the pregnancy would lead to considerable mental trauma to the patient, the said report which has been received from the Doctor, LNJP Hospital, further states to the effect that the minor and her mother i.e., the petitioner herein, have both been explained about the high risk of the termination of the pregnancy as well as the complications that would take place during the surgical procedures as well as of the aspect that the termination procedures may end in a live baby which, if it survives would have long term consequences. It has also been stated in the said report that if the patient and the guardian were willing to take the high risks mentioned in the said report, they could opt for the termination of the pregnancy.

4. Taking into account the factum that the minor daughter of the petitioner is 26 weeks pregnant, it was submitted on behalf of the State by the learned ASC for the State that the Court may interact with the petitioner and the minor. In the interest of justice, it has been considered appropriate to do

SO.

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5. The petitioner, the minor Ms. 'X' and her father have all thus interacted with the Court through Video Conferencing in a separate link where none other than the petitioner, her minor daughter Ms. 'X' and the spouse of the petitioner, i.e., the father of Ms. 'X', learned counsel for the petitioner and the learned Additional Standing Counsel for the State are present.

6. The petitioner, her spouse i.e., the parents of the minor Ms. 'X' and the minor Ms. 'X' have all stated that they seek the termination of the pregnancy submitting to the effect that they would be unable to bear the birth of the child, if any, and the minor Ms. 'X' has also stated as has been stated by her parents that the birth of the child would also ruin her future. The petitioner and her spouse and Ms. 'X' have been apprised by the Court of the Medical report received from the doctor, LNJP Hospital, in relation to the risks that Ms. 'X', the minor may have to undergo in the event of any surgical failures as well as qua the aspect of the birth of the baby in the event of the termination not taking place effectively.

7. Taking the submissions that have been made by the petitioner, her spouse as well as Ms. 'X', the minor, and submissions made on behalf of the petitioner by learned counsel for the petitioner, the reliance place on verdicts relied upon on behalf of either side to submit to the effect that even in cases where the pregnancy has exceeded 20 weeks in terms of Section 3 of the Medical Termination of Pregnancy Act, 1971 and Explanation 1 thereto which prescribes to the effect:

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"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 twelve weeks if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of 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 physical or mental health; or "

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman."

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in as much as, the pregnancy is causing and continues to cause to Ms. 'X' grave anguish which is thus presumed to have been caused to her constituting a grave injury to her mental health in terms of Explanation 1 to Section 3 of the Medical Termination of Pregnancy Act, 1971, in view of the verdicts that have been relied upon on behalf of the petitioner in *Murugan Naikar V. Union of India & Ors.*; 2017 SCC Online SC 1902, *Minor 'X' (Through Guardian Rajkumar) V. State, (NCT) of, Delhi & Ors.*, WP.(C) No. 12795/2018, the verdict of the Hon'ble High Court of Kerala in W.P.(C) 29209/2020 (A) and the verdict of the Hon'ble Supreme Court in *K.S. Puttuswamy V. Union of India*, 2017 (10) SCC I to contend to the effect that it is the woman's freedom of choice whether to bear a child or to abort her pregnancy which falls thus within the realm of privacy, and that the integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop and that privacy is a postulate of human dignity itself which thus enables an individual to retain the anatomy of the body and the mind and to retain the ability to make decisions on vital matters of concern to life and that the privacy of the individual recognizes an inviolable right to determine how the freedom shall be exercised.

8. On behalf of the State the verdict of the Hon'ble High Court of Orrisa in *Gopal Patnaik @ Gopal Krishna Patnaik V. State of Orrisa* W.P.(Crl.) No. 68/2020, a verdict dated 15.12.2020 was fairly shared with the Court to contend to similar effect. However, as pointed out on Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.01.2021 18:50:23 This file is digitally signed by PS to HMJ ANU MALHOTRA.

behalf of the State in the said verdict it had been categorically observed to the effect:

" In view of the above , we dispose of the writ application as well as the interim application, with the direction to the Medical Board Committee already constituted under the Chairmanship of the DMET to carry out the medical termination of pregnancy of the victim girl. But if during the procedure it is found that there is any danger to the life or well being of the victim girl , they have the discretion to cancel the same. However, we hope and trust that our orders shall be given effect to without any further delay.", with it having thus been submitted on behalf of the State that the

said aspect of the very life of Ms. 'X' may also be taken into account and consideration and be protected.

9. On behalf of the petitioner reliance has also been placed on the verdict of the Hon'ble Division Bench of this Court in W.P.(C) 115/2021 a verdict dated 11.1.2021, in Kalpana Singh V.Govt. of NCT of Delhi & Ors., whereby a pregnancy at the stage of 27 weeks and 5 days where the fetus suffered from Anencephaly + was allowed to be terminated.

10. On a consideration of the submissions that have been made on behalf of either side and on a consideration of the catena of verdicts relied upon on behalf of either side, it is considered appropriate to grant permission for medical termination of the pregnancy of the minor Ms. 'X', i.e. the daughter of the petitioner herein in relation to a Zero FIR dated 09.01.2021 registered at PS Mehrauli South under Section 376 of the Indian Penal Code, 1860 to be conducted by the Medical Board of the doctors at AIIMS, which may be conducted Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.01.2021 18:50:23 This file is digitally signed by PS to HMJ ANU MALHOTRA.

expeditiously with however the stipulation that in the event the Board of Doctors which necessarily has to comprise the Head of Department (Obstetrics and Gynaecology) of the AIIMS, finds that during the procedure of the termination of pregnancy being conducted on Ms. 'X' there is any risk to the life of Ms. 'X', the victim girl, they would have the discretion to cancel the procedure for medical termination of pregnancy.

11. Furthermore, in terms of the verdict of the Hon'ble Supreme Court in "Venkata Lakshmi VS. State of Karnataka" Civil Appeal No.15378/2017, for the effective adjudication of the criminal trial in relation to zero FIR dated 09.01.2021, PS Mehrauli South under Section 376 of the Indian Penal Code, 1860, the terminus foetus is directed to be preserved by the AIIMS for the purpose of the DNA Testing with reference to the said trial case subject to the orders of the learned Trial Court.

The petition is disposed of accordingly.

ANU MALHOTRA, J.

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