



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 12th OF DECEMBER, 2024
WRIT PETITION No. 39431 of 2024**



Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Ms. Aditi Mehta, learned counsel for the petitioner.

Shri Sudeep Bhargava, learned Dy. Advocate General appearing on behalf of Advocate General.

ORDER

1] This petition has been filed under Article 226 of the Constitution of India, under the provisions of Medical Termination of Pregnancy Act, 1971 (hereinafter to be referred to as “Act of 1971”) for termination of the pregnancy of the petitioner’s daughter, a minor girl, aged 15 years, who is a victim of gang rape in Crime No.532/2024 registered at P.S. Mehidpur, Dist. Ujjain for offences under Section 64(2), 65(1), 372(2), 351(3) of BNS, 2023 and 3, 4(2), 5j(ii), 5L, 6 of POCSO Act, 2012.

2] Heard counsel for the parties and perused the documents filed on record.

3] On the last date of hearing, *i.e.*, 9/12/2024, this Court had directed the victim to appear before the Chief Medical and Health



Officer, Charak Hospital, District Ujjain on 10.12.2024, for her medical checkup.

4] Today, learned counsel for the State has placed on record the report received from the office of Civil Surgeon, Chief Health Officer/Superintendent District Ujjain, whereby, it has been found that the petitioner's daughter is found to be fit for medical termination of her pregnancy, with written and informed consent with due procedural risk.

5] In such facts and circumstances of the case, this Court finds it expedient to allow this petition and permit the petitioner's daughter (victim) to have her pregnancy medically terminated by following the due procedure at Civil Surgeon, Chief Health Officer/Superintendent District Ujjain.

6] Accordingly, the Superintendent, Civil Surgeon, Chief Health Officer/Superintendent District Ujjain is directed to do the needful and medically terminate the pregnancy of the petitioner's daughter (victim) at the earliest.

7] Needless to say, the victim's identity shall not be disclosed. It is further directed that samples/viscera of the fetus shall be preserved for DNA sampling, to be produced before the competent Court where criminal case is pending.

8] Counsel for the State is also directed to ensure that no inconvenience is caused to the victim due to procedural delays.



**REGARDING THE ORDER PASSED BY THE DISTRICT
COURT ON THE APPLICATION FOR MTP.**

9] It is also found that earlier, on 04.12.2024, the petitioner had also approached the learned Judge of the trial Court for termination of her daughter's pregnancy, however, the same has been rejected by the learned judge of the trial Court vide its order dated 05.12.2024, only on the ground that the petitioner has not produced medical documents in support of her application, the same reads as under :-

“पत्रावली आवेदिका की ओर से प्रस्तुत आवेदन पर विचार हेतु नियत है।

आवेदिका की ओर से प्रस्तुत आवेदन इस प्रकार है कि आवेदक की अवयस्क पुत्री के साथ आरोपियों ने उसकी इच्छा के विरुद्ध बलात्संग किया तथा नाबालिक पीडिता को डरा-धमकाकर किसी को भी बताने से मना किया, जब पीडिता का स्वास्थ्य लगातार खराब रहने लगा था, उक्त स्थिति में पीडिता के नाना एवं माता द्वारा शासकीय चरक हॉस्पिटल उज्जैन में पीडिता का मेडीकल परीक्षण करवाया गया तथा डॉक्टरों के निर्देश के आधार पर सोनोग्राफी टेस्ट करवाया गया तो पीडिता के चार से साढ़े चार माह गर्भवती होने की पुष्टि हुई, हास्पिटल द्वारा पुलिस उज्जैन तथा महिदपुर को सूचित किया गया जिसके आधार द्वारा पुलिस थाना प्रकरण पंजीबद्ध किया गया, जिसका अपराध क्रमांक 532/2024, प्रकरण पंजीबद्ध कर जांच आरंभ की गई, वर्तमान में आरोपी गिरफ्तार नहीं हुए हैं, पीडिता बचपन से ही अपने नाना-नानी के पास ग्राम भीमाखेडा, तहसील महिदपुर में ही निवासरत रही है तथा रायल कान्वेंट स्कूल महिदपुर में आठवीं कक्षा में अध्ययनरत होकर पीडिता को पांच माह या उससे अधिक का गर्भ होने पर पीडिता का गर्भपात नहीं करवाया जा सकेगा, माननीय उच्च न्यायालय एवं उच्चतम न्यायालय द्वारा अपने सुस्थापित न्याय दृष्टांतों में इस प्रकार के प्रकरणों में पीडिता के आगामी भविष्य को देखते हुए गर्भपात की अनुमति न्यायहित में दी गई है, उक्त अपराध के कारण अवयस्क पीडिता चार से साढ़े चार माह के गर्भ से है, अभि गर्भपात करवाये जाने से पीडिता को किसी भी प्रकार की शरीर व स्वास्थ्य पर विपरीत असर की संभावनाएँ नहीं हैं, इसलिए उक्त पीडिता के भविष्य को देखते हुए पीडिता का गर्भपात कराने की



अनुमति बाबत यह आवेदन पत्र प्रस्तुत किया गया, न्यायालय उक्त प्रकरण की स्थिति को देखते हुए पुलिस महिदपुर तथा मेडिकल अधिकारियों को गर्भपात करने की अनुमति देते हुए यह भी निर्देशित करने का कष्ट करें कि गर्भपात के पश्चात् नवजात शिशु का डी एन ए सुरक्षित रखा जावे, जिससे आरोपियों से डी एन ए का, मिलान करवाया जाकर प्रकरण के निराकरण में सहायक सिद्ध हो सके। अतः आवेदन पत्र स्वीकार किया जाकर पीडिता के गर्भपात की अनुमति प्रदान करने का आदेश प्रदान करने का निवेदन किया गया।

आरक्षी केन्द्र महिदपुर, तहसील महिदपुर, जिला उज्जैन म० प्र० से अपराध क्रमांक-532/2024, अंतर्गत धारा-64 (2), 65(1), 372(2), 351(3) भारतीय न्याय संहिता 2023 एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम 2012 की धारा-3, 4(2), 5j(ii), 5L, 6, अभियुक्त हरि के विरुद्ध पंजीबद्ध अपराध की केस डायरी मय प्रतिवेदन प्राप्त।

आवेदन पत्र एवं केस डायरी का अवलोकन किया गया।

अवलोकन से दर्शित है कि आवेदिका अधिवक्ता द्वारा उक्त आवेदन पत्र के साथ पीडिता का किसी डॉक्टर का चिकित्सा संबंधी एवं चिकित्सा संबंधित दस्तावेज प्रस्तुत नहीं किया गया है। अतः प्रकरण की उक्त समग्र परिस्थितियों को दृष्टिगत रखते हुए आवेदिका के गर्भपात करवाने की अनुमति नहीं दी जा सकती है।

केस डायरी आरक्षी केन्द्र महिदपुर, तहसील महिदपुर जिला उज्जैन को वापस की जावे।

आवेदन पत्र का परिणाम पंजी में दर्ज कर आवेदन पत्र नियत समयावधि में अभिलेखागार में भेजा जावे।”

10] First of all, there is no provision in the Act of 1971 that such an application can be filed and entertained before the District Court. However, since the medical termination of pregnancy is a matter of life and death touching upon Article 21 of the Constitution, such an application can only be entertained by the High Court under Article 226 of the Constitution. Thus, the application itself ought not to have been considered on merits by the learned Judge of the District Court.

11] *Secondly*, the aforesaid finding, in the considered opinion of



this Court, also shows the acute insensitive approach displayed by a Judge, who was required to show utmost empathy to a minor, who was a victim of gang rape. It is rather cruel for a court, any court, to expect from a rape victim to produce her medical documents.

12] It is an old saying that '*procrastination is the thief of time*', for instance in the present case, it is found that the victim was first examined by the doctor on 30.11.2024, showing around 19 weeks pregnancy, thus, only due to procedural delays, two crucial weeks have been lost to the utter prejudice of the minor victim, which could have been avoided by the swift action of the all the parties concerned. However, the mother of the victim was wise enough to at least file such application before the District Court.

PROCEDURE TO BE ADOPTED BY THE POLICE, DISTRICT COURTS AND THE REGISTRY OF THIS COURT.

13] Thus, the question is what procedure should be adopted in such cases?

14] This Court, time and again has emphasized the need to expedite the MTP cases where the time is crucial owing to the provisions as contained in S.3 of the MTP Act, which prescribes the outer limit of twenty weeks for termination of pregnancy. It is also a common knowledge that most of the victims and their parents residing in remote areas, are oblivious of their right to



terminate the pregnancy.

15] Hence, with a view to streamline the procedure and to ensure that timely legal and medical help reaches to such victims when it is needed the most, it is directed that ***henceforth, whenever a case of rape is registered in any police station,*** the following procedure shall be adopted :-

- (i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant, shall forthwith forward the victim to the concerned District Court;
- (ii) the learned Judge of the District Court, regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;
- (iii) the District Court, after obtaining the said medical report, under intimation to the victim and her parents, directly **refer** such case and report to the nearest Registry of the High Court;
- (iv) the Registry of this Court, in turn, shall register such reference as a ***Writ Petition under Article 226 of the Constitution, Suo Moto,*** and list the matter immediately before the concerned Bench having the



roster, so that appropriate orders regarding termination of pregnancy can be passed by this Court without any undue delay.

16] Let a copy of this order be sent to the Registrar General of this Court at Jabalpur, as also to the Director General of Police, Bhopal to be circulated to all the Police Stations for its proper compliance.

17] With the aforesaid directions, the writ petition is *allowed* and **disposed of**.

(SUBODH ABHYANKAR)
JUDGE

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