

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE GOPINATH.P.

MONDAY, THE 11TH DAY OF MAY, 2020/21ST VAISAKHA, 1942

W.P(C) NO.9841 OF 2020

PETITIONER :

MRS G

BY ADV. DR. K.P. PRADEEP

RESPONDENTS :

1. UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF WOMEN AND CHILD DEVELOPMENT,
SHASTRI BHAVAN, NEW DELHI-110001.
2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN 695001.
3. DIRECTOR OF MEDICAL EDUCATION,
MEDICAL COLLEGE KUMARAPURAM RD, CHALAKKUZHI,
THIRUVANANTHAPURAM, KERALA 695011.
4. STATION HOUSE OFFICER/INSPECTOR OF POLICE,
VIZHINJAMR POLICE STATION,
VIZHINJAM, THIRUVANANTHAPURAM- 695521
5. SUPERINTENDENT,
GOVERNMENT MEDICAL COLLEGE HOSPITAL,
KUMARAPURAM P.O.,
THIRUVANANTHAPURAM- 695011.
6. SUPERINTENDENT,
GOVERNMENT WOMEN AND CHILD HOSPITAL,
THYCAUD, THIRUVANANTHAPURAM- 695014.
7. DISTRICT CHILD WELFARE COMMITTEE,
THIRUVANANTHAPURAM, GOVERNMENT CHILDREN'S HOME, POOJAPURA,

W.P.(C) NOS.9841 of 2020 2

THIRUVANANTHAPURAM- 695012.,

REPRESENTED BYB ITS CHAIRPERSON.

R1 BY SRI. P.VIJAYAKUMAR, ASGI

R2 TO R7 BY SMT. VINITHA. B. GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 11.05.2020,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 11th day of May, 2020

JUDGMENT

This writ petition is filed by the mother of a minor girl child, who is allegedly an unfortunate victim of rape. The prayer in this writ petition is for a direction to the appropriate authorities to permit the petitioner's minor daughter to undergo medical termination of pregnancy under the provisions of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the 'MTP Act') and to issue consequential directions regarding such termination.

2. Considering the urgency of the matter, when the above writ petition was taken up for consideration today, I passed an interim order directing as follows :-

Admit.

2. *Assistant Solicitor General accepts notice for the 1st respondent. Smt. Vinitha. B. , learned Government Pleader accepts notice on behalf of respondents 2 to 7.*

3. *I have heard Dr. K.P. Pradeep, learned counsel appearing for the petitioner and the respective counsel appearing for the respondents.*

4. *In view of the facts and circumstances of this case, there will be a direction that the minor child of the petitioner shall be subjected to medical examination at SAT Hospital, Thiruvananthapuram at 12 p.m. today itself (11.05.2020), considering the urgency of the matter.*

5. *Smt. Vinitha. B, learned government Pleader submits that the Government shall ensure that the Medical Board comprises of such Doctors who are competent to give a proper opinion to this Court. She also submits that normally a Psychiatrist will also be part of the Medical Board. Again considering the urgency of the matter, the learned Government Pleader states that all attempts will be made to provide a suitable report in the matter by 3 p.m. today (11.05.2020), so that appropriate orders can be passed.*

6. In view of the above, there will be a direction that the minor child of the petitioner will be subjected to medical examination by a Medical Board constituted as above at the SAT Hospital, Thiruvananthapuram at 12 p.m. today (11.05.2020). The Medical Board shall, after examination of the minor child of the petitioner, submit a report to this Court on the following :

i. Whether the continuance of the pregnancy would involve risk to the life of the minor child or of grave injury to her physical and mental health;

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

iii. Whether having regard to the advanced stage of pregnancy, there is any danger (other than the usual danger which arises even in spontaneous delivery or at the end of the full term) if the minor child is permitted to terminate her pregnancy;

iv. The medical process best suited to terminate the pregnancy and the possibility of the child being born alive in the process;

v. *The wishes of the minor daughter as regards the future course of action with respect to her pregnancy shall also be ascertained by the Psychiatrist on the medical board.*

vi. *Any other issues the medical board regards as relevant in such matters.*

7. *The Circle Inspector of Police, Vizhinjam Police Station is directed to facilitate the travel of the petitioner and her minor daughter to SAT Hospital, Thiruvananthapuram and also to ensure the safety of the family at the time of travel to and from the Hospital. The learned Government Pleader shall communicate these directions to the officers concerned forthwith.*

Call at 3 p.m. today (11.05.2020).

3. When this matter was taken up at 3.00 p.m, the learned Government Pleader appearing for the respondent made available for my perusal, a copy of the report of the Medical Board constituted in terms of my order extracted herein above. That Medical Board was comprised of the following members:-

1. Dr. A. Santhosh Kumar, Superintendent, SATH, Govt. Medical College, TVM.

2. Dr. C. Nirmala, Professor & Head, Department of O & G, SAT Hospital, Govt. Medical College, TVM.

3. Dr. Nandini V.R., Professor, Department of O & G, Govt. Medical College, TVM.

4. Dr. Sreekumari R, Professor, Department of O & G, Govt. Medical College, TVM.

5. Dr. Shobha Kumar, Professor & Head, Department of Neonatology Govt. Medical College, TVM.

6. Dr. Mili Babu, Assistant Professor in Psychiatry, Govt. Medical College, TVM

7. Dr. Priyasree J, RMO, Department of O & G, SAT Hospital, Govt. Medical College, TVM.

8. Dr. Hema S Nair, Associate Professor in O & G and Nodal Officer POCSO, SAT Hospital.

The opinion of the Medical Board signed by the Superintendent of the SAT Hospital, Thiruvananthapuram reads as follows :-

"1. In view of the young age the continuation of pregnancy may lead to obstetric complications and maternal morbidity/mortality.

Assistant Professor of Psychiatry assessed the mental status of the child. The child revealed that she is shocked to know that she is pregnant. She expresses anguish regarding her future. She believes that continuing pregnancy could affect her future and studies. She expresses desire to continue

her studies. Continuation of pregnancy in this child could adversely affect her mental health and hence termination is suggested.

2. Based on available USS report there is no physical abnormality for the fetus (present gestational age 22 to 23 weeks).

As per National Neonatology Forum guidelines, the viability is 28 weeks of pregnancy. As per NRP guidelines India and AAP resuscitation is considered only after completion of 24 weeks of pregnancy. If the baby is born at 22 to 23 weeks of gestational age resuscitation need not be considered.

3. The Medical board felt that the available methods of MTP are effective only up to 20 weeks of gestation. Beyond 20 weeks, pregnancy is to be induced as per induction of normal pregnancy. But because of the present gestational age (22 to 23 weeks) in this case uterus may not respond to the usual methods of induction and hence we may have to resort to surgical methods which involves anesthesia and surgical risks.

Signed as above

sd/-
Superintendent
SAT Hospital, Thiruvananthapuram"

4. A reading of the Medical Report leads to the irresistible conclusion that the best course of action in the present circumstances would be to permit medical termination of pregnancy. A Division

Bench of this court had recently summed up the law on the subject of medical termination for pregnancy beyond the period fixed by the provisions of Section 3 of the MTP Act. The Division Bench has placed reliance on paragraphs 9 and 10 of **Ms.X. v. State of Kerala and others** reported in **2016 (4) KLT 745** amongst other judgments. Paragraphs 9 & 10 read as under:-

"(9) Therefore, on an evaluation of the said provisions, it is specific and clear, if it is in the opinion of two medical practitioners, formed in good faith, that the MTP is necessary to save the life of the pregnant woman, the stipulations contained under sub-section (2) of S.3 vanish.

(10) When the situation in the present context is analyzed, petitioner is not mentally prepared to deliver a child and such situation can cause innumerable mental stress and change of attitude in the normal life of the petitioner. Moreover, the circumstances explained show that petitioner did not expect such conduct and behavior from the person with whom she maintained intimate and affectionate relationship. The

circumstances narrated will show, petitioner is and was not mentally prepared to accept the state of affairs at which she is now. The said circumstances, in my view is to be treated as one under S.5 of the Act."

In the facts of the present case also, it is clear from the Medical Report that the Petitioner's minor daughter will be under severe mental stress and strain if the pregnancy was to be allowed to continue. Further in the opinion of the Medical Board the failure to terminate the pregnancy "...may lead to obstetric complications and maternal morbidity/mortality." These circumstances clearly indicate that the conditions of Section 5(1) are satisfied and the fact that the gestational age has crossed the Twenty Week period in Section 3, should not, in any manner be decisive.

5. Further in view of the law laid down by the Division Bench in W.P (C) TMP 9/2020, the right of a

person, to make reproductive choice is also a facet of personal liberty flowing from Article 21 of the Constitution of India. The Division Bench has in its judgment in W.P (C) TMP 9/2020 also referred to the judgment of the Bombay High court in the matter of striking a balance between the right of a person make reproductive choice and the compelling state interest in protecting the life of the prospective child. (Please see **XYZ v. Union of India & Ors** - 2019 (3) Bom.CR 400)

6. In the totality of the facts of this case and respectfully following the declaration of law by the Division Bench of this Court in W.P (C) TMP 9/2020, I deem it appropriate to allow this writ petition by permitting the minor child of the petitioner to undergo medical termination of her pregnancy under the provisions of MTP Act. The termination procedure will be performed by the

doctors of the hospital where she was subjected to medical examination, that is SAT Hospital, Thiruvananthapuram, in accordance of the provisions of MTP Act, 1971 and all other attendant acts, rules and guidelines prescribed for the purpose. The procedure shall be supervised by the members of the Medical Board and a complete record of the procedure performed on the minor child of the petitioner shall be maintained. There shall be a further direction to the doctors take tissue of the fetus for DNA identification and to maintain the same intact for future purposes, especially due to the fact that a criminal case is pending in respect of the alleged rape of the minor child of the petitioner. If the child is born alive; despite the attempts at medical termination of the pregnancy, the doctors shall ensure that everything, which is reasonably possible and feasible in the circumstances and in

contemplation of the law prescribed for the purpose, is offered to such child so that he/she develops into a healthy child.

7. Smt.Vinitha B, the learned Government Pleader states that both the parents of the minor child have to execute an affidavit expressing their consent for conduct of the procedure on their minor daughter. I direct that the petitioner will ensure that such an affidavit, consent forms etc. will be duly executed by the petitioner and her husband in the form and manner required by the hospital authorities. The learned Government Pleader also confirms to me that the procedure can be conducted tomorrow (12.05.2020) and that the petitioner may be directed to ensure that her minor child is admitted to the hospital for enabling the doctors to complete the procedure tomorrow itself.

I also make it clear that the Registry of this Court

and all concerned shall at all times ensure that absolutely privacy shall be maintained with regard to the identity of the petitioner and that of her minor child. It is directed that a copy of writ petition, affidavit, documents and the medical report shall not be issued to any third person without securing orders from this court.

With these directions this writ petition stands disposed of. I place on record my sincere appreciation for the assistance rendered to this Court by Dr.K.P Pradeep, Learned Counsel for the petitioner who appeared *pro-bono*; Smt.Vinitha B, Learned Government Pleader and Ms.Krishna who appeared for the Union of India, representing the Assistant Solicitor General of India

GOPINATH.P, JUDGE

SMA

APPENDIX

PETITIONERS EXTS:

EXT P1: TRUE COPY OF THE FIR IN CRIME NO 1030 OF 2020 AT VIZHINJAM POLICE STATION

EXT P2: TRUE COPY OF OBSTETRIC USG REPORT OF THE GIRL ON 29-04-2020 AT 6TH RESPONDENT HOSPITAL

EXT P3: TRUE COPY OF REPORT OF THE MEDICO LEGAL EXAMINATION DATED 29-4-2020 AT 6TH RESPONDENT HOSPITAL

EXT P4: TRUE COPY OF THE ORDER OF PLACEMENT OF CHILD DATED 8-5-2020 OF THE 7TH RESPONDENT