

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr.) No. 106 of 2020

Raju Ravidas Petitioner(s).
-V e r s u s-
The State of Jharkhand Respondent (s).

CORAM: HON'BLE MR. JUSTICE ANANDA SEN
Through: Video Conferencing

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For the Petitioner(s) : Mr. Anup Kr. Agarwal, Advocate
For the State : Mr. Deepankar, A.C. to A.G
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03/29.06.2020 Heard learned counsel for the parties through video conferencing. They have no complain with respect to the audio and video clarity and quality. Considering the nature of the prayer made, I am disposing the case, to which the parties have no objection.

2. In this application, the petitioners have prayed for a direction upon the respondent authority to take appropriate steps to terminate the pregnancy of the petitioner no. 2 who is the daughter of petitioner no. 1.

3. The petitioners are not pressing the prayer no. B and C of the prayer portion.

4. This writ petition was filed by the Raju Ravidas seeking termination of pregnancy of his daughter. On the last date, counsel for the petitioner verbally prayed to implead his daughter, the victim, also as petitioner no. 2 in the cause title. A vakalatnama has also been filed by the daughter of Raju Ravidas. Though no formal petition has been filed to implead her as a party petitioner in this case, yet seeing the nature of the case I allow the verbal prayer and add the daughter of petitioner no.1, as petitioner no.2 in this writ petition. The name of the Petitioner no 2 is withheld.

5. The daughter of Raju Ravidas, whose name has been withheld will be mentioned as petitioner no. 2 in this order.

6. It is the case of the petitioners that the petitioner no. 2 is a minor girl aged about 15 years. It is alleged that on false pretext of marriage, the girl who is petitioner no. 2 was forced and fraudulently induced to have sexual relationship with the accused/person, for which an FIR has been registered being

Gomiya P.S. Case No. 50 of 2020 under Section 376 (3) of IPC and under Section 6 of POCSO Act. It is alleged that because of sexual assault, petitioner no. 2 became pregnant and she is carrying pregnancy of 20 weeks. It is submitted that this pregnancy is a grave injury to the mental health of the petitioner no. 2, thus the same needs to be terminated. Praying to terminate the pregnancy, this petition has been filed u/s 226 of the Constitution.

7. On the last date i.e. on 25.06.2020 this Court directed the Civil Surgeon-cum-Chief Medical Officer, Bokaro to constitute a Medical Board and submit a report to this Court. Complying the said direction of this Court, a Medical Board was constituted of 6 competent doctors.

8. After the examination of the victim girl, the doctors opined that as per the radiological examination, the age of the girl seems to be more than 18 years on the date of examination. It has further been opined that the period of gestation is 33 weeks 5 days. Status of the girl is normal except the fact that she is anemic and her hemoglobin percentage is 8 gm/dl as on 26.06.2020. It has further been opined that considering the condition, there is risk involved in termination of pregnancy. The report further suggests that there is no chance of injury to the health of fetus in continuation of pregnancy, if anemia is corrected. It has also been observed that there is no gross congenital anomaly of the fetus which is apparent from USG report. It has further been mentioned that for the better health of the patient she may attain the term of pregnancy by managing anemia, followed by induction and delivery of the baby.

9. Section 3 of the Medical Termination of Pregnancy Act (hereinafter referred to as 'Act') provides that subject to Section 4 of the Act, a pregnancy may be terminated by registered medical practitioner where the length of pregnancy does not exceed 12 weeks. Further it provides that when the length of pregnancy exceeds 12 week but does not exceed 20 weeks, and not less than 2 registered medical practitioners are of the opinion formed in good faith that the continuation of pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical

and mental health or there is a substantial risk that if the child will be born it would suffer from such physical or mental abnormalities as to be seriously handicapped, may terminate the pregnancy by a registered medical practitioner.

10. The explanation (i) of Section 3 mandates that 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.

11. In the instant case on the false pretext of marriage the girl was subjected to sexual assault which resulted in pregnancy. This ground is definitely a ground under the Act for termination of pregnancy. But the question falls for consideration before this Court is whether in view of the opinion of the Medical Board, sent by the team of doctors, this Court can accept the prayer of the petitioner or not.

12. Sub-section 3 of Section 3 of the Act provides for the calling of a report about the pregnant woman's actual or reasonable forcible environment as to whether the pregnancy would involve risk of injury to the health or not.

13. As stated above I find that the report submitted by the Medical Board clearly suggests that there is risk involved in termination of pregnancy. Further I find that the hemoglobin count of the girl is only 8 gm/dl. Further as per the report the period of gestation is 33 weeks, 5 days as on 26.06.2020. That means as on today it is 34 weeks, one day. At this period there is substantial growth of the fetus. The physical features have developed substantially. Thus in view of the report submitted by the doctors, this Court is not inclined to accept the prayer made by the petitioner to terminate the pregnancy. Allowing prayer of the petitioner would amount to risking petitioner no. 2 who is the victim girl with her life. Thus I am not inclined to entertain the prayer of the petitioner for termination of the pregnancy.

14. It is the case of the petitioners that petitioner no. 2 was sexually assaulted which resulted in pregnancy. Now the unmarried girl has to deliver the child. This pregnancy has caused

a very big trauma to the girl and further the girl needs proper medical care for giving birth to a child, as it is found that she is also anemic.

15. By inserting Section 357 (C) in Cr.P.C, the legislature has given a right to the victim of the offences mentioned there in to get proper treatment. It provides that all hospital public or private, which were run by the Central Government or the State Government or the local bodies should provide medical treatments, free of cost to the victim of the offences covered in the aforesaid section.

16. In the instant case the petitioner no. 2 who is a victim girl is covered to get the benefit under Section 357 (C) of the Cr.P.C. Thus invoking jurisdiction under Article 226 of the Constitution of India, I direct the State to take all steps from today onwards to cater to all the medical needs of the victim girl, who is petitioner no. 2. Her periodical check-up and medical needs will be taken care of by the State, at Bokaro General Hospital, SAIL, Bokaro or any other similarly situated hospital, free of cost. If necessary, any test or investigation which needs to be done and is not available at Bokaro General Hospital, SAIL, Bokaro, the State will ensure that the said examination is done in a different center at the cost of the State. The expenses incurred of the delivery of the child will be borne by the State.

17. Further after birth of the child, till 6 months, the medical need of the child and mother will be taken care of by the State, free of cost. I further direct the Secretary, DLSA, Bokaro to nominate a PLV, who will coordinate with the State authority and the petitioners to give effect to this order. Secretary DLSA, Bokaro, will also monitor from time to time, the development and will see that the order of this Court is complied with in true letter and spirit. Further if there is any scheme of the Government, to which the Petitioner no.2 and/or her child to be born, is entitled to, the same should be provided to them.

18. Before parting, I would like to observe that the trial court who is in seisin of Gomiya P.S. Case No. 50 of 2020 registered under Section 376(3) of IPC and under Section 6 of POCSO Act

may consider giving appropriate reliefs to this victim by imposing necessary/sufficient cost or compensation, if the accused in the aforesaid case stands convicted. The Court will also consider whether the accused, if convicted, should be directed to reimburse the expenses of the delivery of child and the expenses incurred by the State towards the amount spent in the entire process.

19. With the aforesaid observation, this criminal writ petition stands disposed of.

20. Let a copy of this order be communicated to the Health Secretary, Jharkhand, Principal District Judge, Bokaro, Deputy Commissioner, Bokaro, Civil Surgeon-cum-Chief Medical Officer, Bokaro, In-charge, Bokaro General Hospital, SAIL, Bokaro and Secretary, DLSA, Bokaro.

(Ananda Sen, J.)