

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.13546 of 2021**

***Madhusudan Biswal***

.... ***Petitioners***

Mr. O. Devdas, Advocate

-versus-

***State of Odisha and others***

.... ***Opposite Parties***

Mr. M. S. Sahoo,

Additional Government Advocate for State

**CORAM:**

**THE CHIEF JUSTICE**

**JUSTICE B. P. ROUTRAY**

**ORDER**

**09.04.2021**

**Order No.**

02.

1. This matter is taken up by video conferencing mode.
2. Though the matter is not listed today, on being mentioned by learned counsel for the Petitioner, it is taken up by a separate notice.
3. The Petitioner has moved this Court under urgent circumstances seeking termination of the pregnancy of his 14-year-old daughter, who is a rape survivor, in terms of the Medical Termination of Pregnancy (Amendment) Act, 2021 ('MTP, Act 2021').
4. It is stated that the Petitioner's minor daughter underwent medical examination and ultrasound test on 16<sup>th</sup> March, 2021. The report revealed a single foetus active in breech. The Petitioner's daughter was referred for abortion by the District Headquarters Hospital, Puri to the S.C.B. Medical College and Hospital, Cuttack on 26<sup>th</sup> March 2021, noting in the referral sheet that her pregnancy was 21 weeks old.

5. The General Superintendent, SCB Medical College and Hospital, Cuttack has written a letter to the Director of Medical Education and Training, Odisha on 30<sup>th</sup> March 2021, that since the pregnancy was more than 20 weeks, the MTP could not be done in terms of MTP Act, 1971 and that special permission of the Court would be required.

6. Learned counsel for the Petitioner has referred the Court to the amendment to Section 3 Sub-Section 4 brought about by the MTP, Act 2021, which *inter alia* states that the pregnancy may be terminated by a registered medical practitioner where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks, if not less than two registered medical practitioners have formed an opinion in good faith that the continuance of such pregnancy shall constitute a grave injury to the mental health of the pregnant woman. Explanation- 2 states that where the pregnancy alleged to have been caused by rape, a grave injury to the mental health shall be presumed.

7. The Court's attention is also drawn to the judgment of the Supreme Court in ***Chandrakant Jayantilal Suthar and another v. State of Gujarat, (2015) 8 SCC 721***, where in similar circumstances directions had been issued for MTP where it was a minor 14-year-old rape victim.

8. The General Superintendent, SCB Medical College and Hospital, Cuttack is directed to constitute a Board of three medical experts, who will examine the Petitioner's daughter either by this evening or at the latest tomorrow i.e. on 10<sup>th</sup> April 2021, by 12 Noon and without awaiting further orders from this Court if they recommend the MTP

be carried out, then the General Superintendent, SCB Medical College and Hospital, Cuttack will proceed to arrange for it to take place at the very earliest considering that the Petitioner's minor daughter is already in the 23<sup>rd</sup> week of pregnancy.

9. List on 12<sup>th</sup> April 2021, at 2 P.M. for the Court to be apprised of the progress.

10. All the parties will act on the downloaded copy of this order forthwith. The Registrar General of this Court will communicate this order forthwith by e-mail and phone to the General Superintendent, SCB Medical College and Hospital, Cuttack, for compliance.

11. As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25<sup>th</sup> March, 2020.

**(Dr. S. Muralidhar)**  
**Chief Justice**

**( B.P. Routray )**  
**Judge**

M. Panda