

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 30th OF APRIL, 2024

WRIT PETITION No. 9585 of 2024

BETWEEN:-

HARISH DEVDA S/O RAHJING DEVDA, AGED ABOUT 44 YEARS, OCCUPATION: LABOUR GRAM BAJRANGARH, RAOTI DISTRICT RATLAM (MADHYA PRADESH)

.....PETITIONER

(BY SHRI LUCKY BIJOLIA, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)

2. PRINCIPAL AND DEAN GOVERNMENT MEDICAL COLLEGE GRAM BANJALI, DISTRICT RATLAM (MADHYA PRADESH)

3. STATE OF MADHYA PRADESH THROUGH POLICE STATION RAOTI, DISTRICT RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. HARSHLATA SONI AND MS. GEETANJALI CHAURASIA, G.A.)

This petition coming on for admission this day, the court passed the following:

ORDER

1] This writ petition has been filed under Article 226 of the Constitution of India by the petitioner (father of victim of rape) seeking medical termination of pregnancy of his daughter and after

verifying the health status, as per the direction issued by this Court on 10/04/2024, a report was submitted by the Dean of Dr. Laxminarayan Pandey Government Medical College, Ratlam opining that as the victim, carrying 22 weeks' pregnancy, is having deficiency of haemoglobin, and her pregnancy can be terminated after her haemoglobin level gets normal. Thus, vide order dated 12.04.2024, this Court directed the concerned team of Doctors to carry out the termination soon after the haemoglobin of the victim gets normal, and today, counsel for the State has informed that the pregnancy has already been terminated on 17.04.2024..

2] While passing the aforesaid order dated 12/04/2024, this Court also observed a disturbing fact that although the victim was abducted by the accused on 28/01/2024, she was recovered on 01/03/2024, and on the same day her MLC was conducted, and as per her urinary pregnancy test, it was found that she was pregnant, whereas the present writ petition has been filed only on 08.04.2024, i.e., after more than one month of detection of her pregnancy

3] Thus, despite knowing that the victim is pregnant, neither the treating doctor nor the concerned SHO of the police station informed the petitioner or her other relatives about existence of such pregnancy, and also that such pregnancy which has occurred on account of rape of the minor girl, can also be terminated under the provisions of law. Hence, this Court also directed the SHO of police station Rawti, District Ratlam as also the concerned doctor who had prepared the MLC of the victim to file affidavit whether they had apprised the petitioner or any other relative of the victim that her

pregnancy should be terminated considering the fact that the victim was minor, and in compliance of the aforesaid order, a report has also been filed along with affidavit of Mr. Jayprakash Chouhan, SHO, Police Station, Rawti, District Ratlam, and it is informed that on 04/03/2024, when the victim's ultrasound was conducted, the Sub Inspector had already informed the petitioner regarding pregnancy of victim. A memo dated 04/03/2024 in this regard is also placed on record.

4] On perusal of the same, it is found that the said Sub Inspector had informed the petitioner that the victim is having pregnancy of 17 weeks and 5 days, and in case of her delivery or abortion, as the case may be, she (Sub Inspector) may be informed. A receipt of Nivedita Balika Griha (Girls Hostel) is also placed on record wherein there is no endorsement that if the Superintendent of the said Balika Griha (Hostel) was also informed that the victim is pregnant.

5] Counsel for the State has submitted that when the MLC was conducted, the mother of the victim was also present and after her consent, the victim was examined by the doctor and she was also informed that the victim is pregnant. Counsel has also submitted that the affidavit of the treating doctor could not be filed as the concerned doctor has been transferred to some other place and it would take some time to obtain his/her affidavit, however, it is not denied that in the compliance report, it is not even stated that the parents of the victim were informed orally that she is pregnant and her pregnancy can be terminated.

6] In the considered opinion of this Court, the aforesaid apathetic

conduct adopted by the Investigating Officer as also by the treating doctor is deplorable, as it was incumbent upon the Investigating Officer as also the treating doctor to inform the petitioner who happens to be the father of the victim of rape or any other responsible family member of the victim to apprise them that since the victim is minor and she is also carrying a pregnancy, it would be harmful for her health to further continue with the pregnancy, and the parents of the victim as also the victim ought to have been advised to get her pregnancy terminated.

7] It is a common knowledge that most of the rape cases take place in the remote areas where neither the woman nor her family members are aware of existence of the Act of 1971, and thus, it becomes the duty of the Investigating Officer as also the treating doctor to apprise such persons who are the victim of an offence of rape that they have a right to terminate the pregnancy of the victim/prosecutrix before 22 weeks. This court is of the considered opinion that non-disclosure of such information to the victim infringes upon her right to live with dignity as enshrined under Art.21 of the Constitution of India, and at the same time it also defeats the vary purpose for which the Act of 1971 was enacted.

8] In such situation, to avoid such last minute request for termination of pregnancy under the MTP Act, and to save the victims of rape from life time of a trauma, it is directed that in future, in all the cases of rape, where it is found that the prosecutrix/victim, whether minor or not, is pregnant, she/her parents must be advised immediately by the officer of the concerned police station as also the

treating doctor, about her right to get her pregnancy terminated under the provisions of Medical Termination of Pregnancy Act, 1971.

9] It is also directed that the factum of information provided to the victim and her family members should also be specifically made by the Investigating Officer/treating doctor in writing, without fail, and any non-compliance of this order shall be treated as the contempt of the order passed by this Court.

10] Let a copy of this order be sent to all the Police Stations of the State of M.P. and the Government Hospitals.

11] With the aforesaid directions, the petition stands *disposed of*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

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