

In the court of Additional Sessions Judge, 1st Court, Uluberia, Howrah.
Special case No. 37 of 2024
Uluberia P.S. case No. 89/24, dated 11.03.2024
Present : Sri Rajesh Kumar Singh
(JO Code No. WB-01300)

Order No. 5, dated 20.07.2024

Today is fixed for appearance of the I.O.

I.O. has made a prayer for termination of pregnancy i.e. abortion of the fetus of the victim girl, aged 14 + years, collecting and preserving blood sample of victim girl and preserving the aborted fetus if done for DNA profiling and also praying for direction upon the Chairperson, Child Welfare Committee, S.S.M. Home, P.S Liluah, Howrah to hand over the victim girl to the I.O. for her termination of pregnancy.

De facto complainant/ father of the victim and mother of the victim have filed separate affidavits.

I.O is present along with victim and her father and her mother together with victim challan.

Ld. Special P.P in-charge is present.

The de facto complainant, mother of the victim are present with the victim girl.

Considering the submissions of the Ld. Special P.P in-charge for the de facto complainant and in view of the urgency in the matter, the application filed by the de facto complainant for termination of pregnancy of his minor daughter is taken up for hearing.

Heard the Ld. Special P.P in-charge.

Also heard the de facto complainant and the victim girl in person.

The de facto complainant has prayed before this court for necessary permission to terminate the pregnancy, as he and his minor daughter are unwilling to birth of the child conceived through rape.

On being asked in seclusion in the chamber, the minor victim girl has stated that she is suffering from mental agony and she is unwilling to give birth of the child conceived through rape and growing in her womb.

Ld. Special P.P in-charge leaves the matter to the discretion of the Ld. Court and also submits that the welfare of the minor child be taken into consideration at the time of disposal of the instant application.

Perused the materials on record, CD, and petition filed by the de facto complainant praying for termination of the pregnancy of his minor daughter.

Considered.

It has been contended that the victim girl is 14+ years old and she had been made pregnant against her will by the accused person and now she wants to terminate her pregnancy. The de facto complainant has submitted that it is impossible for the victim girl to carry and deliver the child at this tender age and the circumstances of the case. As such he has prayed for an urgent order of abortion of the child.

It is a case of sexual assault upon the minor by her close relative for which victim became pregnant and at present she is having ten weeks.

It is the duty of the POCSO court to ensure the safety, surety and well being of the minor is of paramount consideration who is the victim of sexual assault.

Ld. Special P.P in-charge has relied upon a case law of the Hon'ble Gujarat High Court dated 30th January 2018 Surjibhai Badaji Kalasva on behalf of his minor daughter versus State of Gujarat. The Hon'ble Gujarat High Court had passed the order in Special Criminal Application (Direction) No. 585 of 2018 in a similar circumstances.

Contd.

Special case No. 37 of 2024

Contd. Order No. 5, dated 20.07.2024

Considering the facts and circumstances and the submissions of the Ld. Special P.P in-charge, it appears that the defacto complainant of this case is a mother of a 14+ years old minor girl (victim) who has complained before the concerned authority that her daughter has been repeatedly raped by the accused on several times against her will and she become pregnant. Now the mother of the victim girl has filed a petition praying for abortion of the child in the womb of the minor victim girl.

Considering all aspects, it appears that it may be appreciated that carrying the child of pregnancy caused by rape is likely to create tremendous anguish in the mind of the victim girl carrying the child. Under such circumstance time is precious and each and every day is vital and would have bearing on the consequences of either delivery of the child or termination of pregnancy. To save time in view of the urgency of the situation, it appears that it is absolutely necessary to constitute a Medical Board at the earliest to opine on all aspects and on all probabilities including risk of abortion and risk of carrying the child by the minor victim girl. It appears that the question of abortion in the present fact and circumstances not only taken into consideration regarding the physical health of the victim girl but the physiological neurological and other aspects of the mental health of the victim should also be considered.

As under Medical Termination of Pregnancy Act, 1971 and MTP Amendment Act, 2021 Doctors/ Medical Board are the competent authorities to decide about termination of pregnancy considering the different stages of gestation such as up to 20 weeks.

As such this court consists following the Judgment of the Hon'ble Gujarat High Court referred above, that there should be a panel of five doctors to constitute a Medical Board and the said panel should consist of No.(i) Professor and Head of the Department of Obstetrics & Gynecology, (ii) Professor and HOD, Department of Neurology, (iii) Professor & HOD, Department of Pediatric, (iv) Professor & HOD, Department of Radiology and (v) Professor of HOD, Department of Psychiatry.

The Superintendent, MSVP Sarat Chandra Chattapadhyay Government Medical College and Hospital is to arrange for termination of pregnancy of the victim and to do all the needful for constitution of the concerned Medical Board and the examination of the victim girl before the said Medical Board and collecting and preserving blood sample of victim girl and preserving the aborted fetus, if done for DNA profiling.

If all the doctors required in the said panel are not available at MSVP, Sarat Chandra Chattapadhyay Government Medical College and Hospital, Uluberia then the Medical Board may be constituted by fulfilling the panel including the Head of the department of any other Government Hospital of the District or Government Hospital of Kolkata.

The Medical Board so constituted is directed to reflect on the risk of abortion covering all aspects including the period of pregnancy and the age of the fetus, if any, the risk in case the pregnancy is terminated, the risk if the victim girl continues with the pregnancy, the risk in case of child birth by the victim girl and all other concerned physical and psychological factors to be communicated to the victim and her guardian. The Board has to be constituted and the victim girl has to be produced before the Board for the necessary tests by the Board and the Board will be at liberty to take appropriate decision regarding termination or not.

It has to be borne in mind that it is for the said Medical Board to give the opinion as to whether the abortion as prayed for should be done or not vis a vis the risk factors and the provisions of the Medical Termination of Pregnancy Act, 1971 and amended provisions should be strictly followed in this regard.

Contd.

Special case No. 37 of 2024

Contd. Order No. 5, dated 20.07.2024

The I.O. is directed to take all necessary steps in coordination with the Superintendent, MSVP Sarat Chandra Chattapadhyay Government Medical College and Hospital, Uluberia and to make all arrangements for producing the victim girl duly accompanied by her father/defacto complainant and mother before the concerned doctors for her examination and report with respect of termination of pregnancy as prayed for by the victim girl through her mother/defacto complainant.

Let a copy of this order be sent to the Superintendent, MSVP Sarat Chandra Chattapadhyay Government Medical College and Hospital, Uluberia for his information, necessary prompt action and strict compliance.

The Chairperson, Child Welfare Committee, S.S.M. Home, P.S Liluah, Howrah is directed to hand over the victim girl (14+ years) for her termination of pregnancy to the I.O. on proper receipt and to receive her back after the abortion of fetus.

Let a copy of this order be also sent to the I.O. of this case for information, necessary prompt action and strict compliance.

CD be returned.

The petition is thus disposed of.

To 30.07.2024 for report of the Medical Board of MSVP Sarat Chandra Chattapadhyay Government Medical College and Hospital, Uluberia and further order.

To date (07.08.2024).

Dictated and corrected by me.

Addl. Sessions Judge
1st Court, Uluberia.
(In-charge)

Additional Sessions Judge, 1st Court
Uluberia, Howrah.
(In-charge)