

**Ms.x Vs. State Of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/1234958](https://sooperkanoon.com/1234958)

**Court :** Karnataka

**Decided On :** Dec-12-2023

**Judge :** Suraj Govindaraj

**Appeal No. :** WP 27563/2023

**Appellant :** Ms.x

**Respondent :** State Of Karnataka

**Judgement :**

- 1 - NC:

2023. KHC:45180 WP No.27563 of 2023 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE12H DAY OF DECEMBER, 2023 R BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.27563 OF2023(GM-RES) BETWEEN: MS.X D/O SHRI GOPALA T, AGED ABOUT17YEARS (MINOR), R/AT CHANNIPURA V KALAHALLI VILLAGE, SARJAPURA HOBLI, ANEKAL TALUK, BENGALURU RURAL DISTRICT56212, REP BY HER FATHER, SHRI GOPALA T, PETITIONER (BY SRI. PRASANNA KUMAR P.,ADVOCATE) AND:

1. STATE OF KARNATAKA REP BY ITS PRINCIPAL SECRETARY, HOME DEPARTMENT, VIDHANA SOUDHA, DR BR AMBEDKAR VEEDHI, BENGALURU56000 2. STATE OF KARNATAKA BY SARJAPURA POLICE STATION, ATTIBELE SUB DIVISION, BENGALURU RURAL DISTRICT, REP BY

ITS STATE PUBLIC PROSECUTOR, HIGH COURT BUILDING, BENGALURU56000 3. KARNATAKA STATE LEGAL SERVICES AUTHORITY1T FLOOR, NYAYA DEGULA, H SIDDAIAH ROAD, - 2 - NC:

2023. KHC:45180 WP No.27563 of 2023 BENGALURU56002, REP BY ITS MEMBER SECRETARY<sup>4</sup> VANI VILLAS WOMEN AND CHILDREN HOSPITAL DEPT OF RADIO DIAGNOSIS BENGALURU MEDICAL COLLEGE, VICTORIA HOSPITAL COMPOUND, SULTAN ROAD, KALASIPALYA, BENGALURU56000, REP BY ITS CHIEF SURGEON<sup>5</sup> CHILD WELFARE COMMITTEE BENGALURU URBAN DIVISION, HOMBEGOWDA NAGARA, BENGALURU56002, REP BY ITS CHAIR PERSON<sup>6</sup> DISTRICT CHILD PROTECTION UNIT BENGALURU URBAN, DISTRICT CHILD PROTECTION UNIT, DHARAMARAM COLLEGE POST, BESIDE KIDVAY HOSPITAL, WELFARE DEPARTMENT COMPLEX, DR M H MARIGOWDA ROAD, HOSUR ROAD, BENGALURU56002, REP BY ITS INSTITUTIONAL OFFICER RESPONDENTS (BY SRI. NAVEENCHANDRASHEKAR., AGA FOR R1, R2, R4 TO R6; SMT. SHILPA RANI., ADVOCATE FOR R3) THIS WRIT IS FILED UNDER ARTICLE226OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT,

ORDER

OR DIRECTION IN THE NATURE OF MANDAMUS DIRECTING THE<sup>4</sup>H RESPONDENT/HOSPITAL TO ADMIT THE PETITIONER AND TAKE NECESSARY MEDICAL STEPS TO TERMINATE THE PREGNANCY OF THE PETITIONER AND ETC. THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING: - 3 - NC:

2023. KHC:45180 WP No.27563 of 2023

ORDER

1 The petitioner is before this Court seeking for the following reliefs: a. Issue a writ, order or direction in the nature of mandamus directing the 4th Respondent/hospital to admit the petitioner and take necessary medical steps to terminate the pregnancy of the petitioner. b. Issue a writ ,order or direction in the nature of mandamus directing the 4th respondent/hospital to preserve the terminated

fetus/product of conception for the purpose of identification and DNA testing & analysis; c. Issue a writ, order or direction in the nature of mandamus directing the 2nd respondent/police to take all the steps and conduct DNA test at State Forensic Laboratory, Madiwala, Bengaluru to the terminated fetus/product of conception for the purpose of investigation & trial in connection with Crime No.391/2023 dated 26.11.2023 registered by the 2nd Respondent/police vide Annexure-F d. Issue a writ, order or direction in the nature of mandamus directing the 3rd respondent/ authority to disburse a sum of Rs. 1,00,000/- (Rupees One Lakh only) and/or any other further amount to the petitioner in order for her to meet the expenses of medical treatments, counselling services & any other medical care that the petitioner may require and e. Grant such other reliefs, as deemed fit in the circumstances of the case including the compensation, in the interest of justice.-. 4 - NC:

2023. KHC:45180 WP No.27563 of 2023 2. The petitioner is a minor girl aged about 17 years represented by her father natural guardian. The petitioner is referred to as the victim and/or Ms.X in order to protect her privacy.

3. The FIR and complaint in Crime No.391/2023 was registered on 26.11.2023 under Section 363 of IPC by the father/natural guardian of the petitioner apprehending that she had been kidnapped/abducted. During the course of investigation, respondent No.2 police traced the petitioner. When she was traced, she revealed that the accused was a resident near to the house of the petitioner and he had firstly taken her to the deserted place and committed an act of sexual intercourse in the back seat of an auto while promising to marry her.

4. Thereafter, he took her away from her parents house and committed the act of sexual intercourse 4 to 5 times instructing the petitioner not to reveal the same to anyone. The petitioners menstrual cycle having - 5 - NC:

2023. KHC:45180 WP No.27563 of 2023 stopped and the petitioner having done a pregnancy check using a pregnancy kit on 19.11.2023 which stood positive.

5. At that time, the accused promised to marry the petitioner and it is at this stage that the petitioner while standing near the bus stand was secured by the police

and thereafter, on conducting a ultrasound video diagnosis, it came to light that the petitioner is pregnant with live intra uterine fetus of 24 weeks + 2 days. Hence, the offences under 376 IPC, Section 5(l) and 6 of POSCO Act as also offences under Section 3(1)(w) (i) and (ii) and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been added to the FIR.

6. In the meanwhile, the petitioner was hospitalized with respondent No.4 and the petitioner and her natural guardian father wishing to terminate her pregnancy and not wanting to continue with the birth of the child had requested the concerned doctors to terminate the - 6 - NC:

2023. KHC:45180 WP No.27563 of 2023 pregnancy. However, the pregnancy having crossed 24 weeks and being beyond the limits prescribed under Rule 3B of Medical Termination of Pregnancy Rules, 2003, the petitioner was asked to approach this Court which the petitioner has done.

7. The petitioner being a minor studying in II PUC being of the opinion that if she were to continue with the pregnancy she would not be able to study and also that she would not be able to mingle in the society which would effect her both physically and psychologically is wanting to terminate the pregnancy. It is contended that the petitioner does not wish to continue the unwanted pregnancy which violate the integrity of her body and on account of going through severe mental trauma which would persist wishes to terminate her pregnancy. It is in that background that the petitioner has sought for the aforesaid reliefs.-. 7 - NC:

2023. KHC:45180 WP No.27563 of 2023 8. This Court vide order dated 11.12.2023 constituted a Medical Board in terms of sub-Section [2C]. of Section 3 of the Medical Termination of Pregnancy Act, 1971. The said Committee has submitted a report today stating that there would be no harm or injury which would be caused to the petitioner if the said procedure is performed. The basic parameters of the petitioner are stated to and found to be normal and the report further evidences that the pregnancy is 26 weeks.

9. In view of the said report not indicating any contra indications and/or any aspect which may endanger the petitioner if Medical Termination Pregnancy procedure is

resorted to, I am of the considered opinion that the said request can be favourably considered.

10. The petitioner being of the tender age of 17 years, she would not be in a position to take care of the child when born and also taking into account that she is still studying and if she were to give birth it would affect her future prospects in both her studies and - 8 - NC:

2023. KHC:45180 WP No.27563 of 2023 otherwise, she having come forward ofcourse through her natural guardian father for safeguarding her reproductive choice, I am of the considered opinion that her wishes to terminate the pregnancy which has been apparently forced on her to the alleged sexual offences committed on her, I am of the considered opinion that the said request on this ground also would have to be considered favourably.

11. There are several cases of minor pregnancy which are being reported arising out of alleged sexual offences in pursuance of which FIRs have been registered and prosecution initiated. It is only subsequent to the filing of FIR during the course of investigation and/or sometimes even much later that a wish or desire is expressed by the victim of such an offence for termination of the pregnancy caused out of such offence, for various reasons some of which have been put forth by the petitioner in the present matter. Most of the time, by a time such a wish is expressed the - 9 - NC:

2023. KHC:45180 WP No.27563 of 2023 gestation period would have crossed 24 weeks which is the permissible period under the Medical Termination of Pregnancy Act, 1971 any delay thereafter would require permission to be obtained from this Court. Thereafter a Medical Board is constituted to ascertain whether such a procedure can be carried out or not and on the basis of the recommendation, orders are passed. During this entire period, there is severe mental trauma which is caused to the petitioner as also her family members which can well be avoided if at the time of registration of the FIR itself her rights as regards termination of medical pregnancy caused out of such sexual offences are conveyed to both the victim and her family. Thus, I am of the considered opinion that: i) Immediately on registration of a sexual offence under Section 376 of IPC or

under the POSCO Act, a medical examination of the victim be made to ascertain amongst others if she is - 10 - NC:

2023. KHC:45180 WP No.27563 of 2023 pregnant or not, if so the gestation period to be ascertained, the physical and mental status of the victim, the ability to undergo the medical termination of the pregnancy, any aggravating factors and/or factors which will impinge upon the health and wellbeing of the victim. ii) In the event of the victim is found to be pregnant, the Child Welfare Committee and/or District Child Protection Unit, as the case may be, is directed to be informed of the same by the Investigation officer, who in turn are directed to counsel/advice the victim and her family members of the legal options which are available like the continuance of the pregnancy and consequences thereof, the termination of the pregnancy, the process, procedure and consequences thereof etc.,. iii) Such counselling is to be carried out in a language known to the victim, if necessary, by - 11 - NC:

2023. KHC:45180 WP No.27563 of 2023 making use of suitable translators. All questions asked by the victim and her family members are to be answered in a language known and understood by them so that there is no miscommunication. iv) In the event of Medical Termination of Pregnancy being carried out the tissue samples of the fetus to be sent to the Forensic Science laboratory for and DNA analysis, if possible to preserve additional samples for verification if required. v) Follow up checks to be done to ascertain the physical and mental well being of the victim. vi) The Director General of Police along with the Principal Secretary Health, Government of Karnataka, to get prepared a detailed Standard operating procedure by constituting such committee of experts as they deem fit, in respect of the above and circulate it amongst all investigating officers, Child Welfare Committees, - 12 - NC:

2023. KHC:45180 WP No.27563 of 2023 District Child Protection Units, government hospitals, as also to make available training in this regards to all concerned. vii) The Legal services authority to take into account the surrounding factors and release such compensation as permissible to the victim and her family for her immediate requirements.

12. In view of the above, I pass the following order:

**ORDER**

1 The petition is allowed.

2. Respondent No.4 is directed to carry out medical termination of pregnancy of the petitioner by taking all safeguards necessary.

3. On the termination of pregnancy, respondent No.4 shall collect the tissue samples of the fetus and preserve the same for the purpose of DNA analysis if any required or ordered by the Court seized of the POCSO matter.

4. A report as regards the procedure once completed to be filed on the file of this Court.-. 13 - NC:

2023. KHC:45180 WP No.27563 of 2023 5. Though the above petition is disposed of, to report compliance of the directions in the body of the order, relist on 18.01.2024 at 2.30 p.m. Sd/- JUDGE PRS, List No.:

1. SI No.:

12.

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