

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 7TH DAY OF NOVEMBER 2022 / 16TH KARTHIKA, 1944

WP(C) NO. 33884 OF 2022

PETITIONER/S:

RAMSIYAMOL R S

[REDACTED]
BY ADVS.
C.R.JAYAKUMAR
NOBEL RAJU
RAJ CAROLIN V.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT
OF HEALTH & FAMILY WELFARE, SECRETARIAT,
THIRUVANANTHAPURAM-695 001
- 2 THE DIRECTOR,
DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL
JUNCTION, THIRUVANANTHAPURAM-695 035
- 3 THE DISTRICT MEDICAL OFFICER,
OFFICE OF THE DISTRICT MEDICAL OFFICER, CIVIL
STATION, KOLLAM-691 013
- 4 THE SUPERINTENDENT,
THE GOVERNMENT VICTORIA HOSPITAL (WOMEN),
CHINNAKADA P.O., KOLLAM-691 001
- 5 ADDL.R5. THE SUPERINTENDENT,
SREE AVITTAM THIRUNALHOSPITAL(SAT), CHALAKKUZHI,
THIRUVANANTHAPURAM-695011.
ADDL.R5 IS SUO MOTU IMPEADED AS PER ORDER DATED 26-
10-2022 IN WP(C) 33884/2022)

OTHER PRESENT:

GP RIYAL DEVASSY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01.11.2022, THE COURT ON 07.11.2022 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 07th day of November, 2022

The petitioner, an unmarried woman, whose pregnancy has crossed the gestation period of 28 weeks, is before this Court seeking permission for medical termination of her pregnancy. According to the petitioner, she was in love with a person named Sanjay and was in a live-in relationship with him from 17.11.2021 onwards. Petitioner admits that the pregnancy is from a consensual sexual relationship with Sanjay. According to the petitioner, she had sex with Sanjay believing his promise to convert to Islam and marry her. Contrary to the promise, Sanjay refused to marry the petitioner, unless his demand for dowry is met. The petitioner also alleges that her partner used to assault her in an inebriated state and she was finally driven

out of his house on 27.09.2022. From that day onwards, the relationship between the petitioner and her partner has broken down irretrievably. The petitioner underwent a radio diagnosis on 19.08.2022, which revealed that the gestational age of the foetus is 18 weeks and one day. The petitioner laments that her family is economically backward and birth of a child prior to the petitioner's marriage will adversely effect her future as also the dignity of the family. Hence the petitioner decided to terminate the pregnancy and for that purpose, approached medical practitioners. The Doctors are not willing to conduct the surgery in the absence of a direction from this Court. Hence, this writ petition.

2. When the writ petition came up for admission, the Superintendent, SAT Hospital, Thiruvananthapuram was directed to constitute a Medical Board for examining the petitioner and to

make available the Medical Board's opinion. Accordingly the medical board examined the petitioner on 29.10.2022 and opined as under;

"Summary of the case

21 year old unmarried primi gravida with gestational age of 28 weeks with regular ANC from Victoria Hospital Kollam, with LMP 16-4-2022 and EDC on 23-1-2023 with regular cycles and with excellent dates. She has got obstetric anomaly scan suggestive of no anomalies.

The Psychiatrist and obstetrician opined that 21 year old lady with educational status Plus Two has become pregnant from live-in consensual relationship of five months duration. She has no history of mental illness and does not report symptoms of mental illness at present. Mental status examination reveals a conscious, oriented female with clinically normal intellectual function and sound mind. She has good insight and awareness about her pregnancy. She was taking good care of her pregnancy by regular ANC from Victoria Hospital, Kollam. History, clinical examination and ultrasound findings show an uncomplicated singleton

live pregnancy of 28 weeks duration with no fetal or maternal complications.

The neonatologist opined that at gestation of 28 weeks and estimated fetal weight of 1122 grams, if terminated now there is 50-60% chance of survival of the new born. There is increased risk of neonatal morbidities like respiratory distress syndrome and need for invasive ventilation if baby survives. The baby requires prolonged NICU stay also. There is also an increased risk of adverse neuro developmental outcome for the baby like Retinopathy of prematurity, chronic lung disease, Necrotizing enterocolitis and intraventricular hemorrhage. We are ethically and medico legally bound to give ICU care to the newborn baby after birth.

As per the MTP act 2021 amendment, termination of pregnancy is acceptable till 24 weeks. In this case as the pregnancy is 28 weeks now, it doesn't come under the purview of MTP act."

3. The Medical Board's opinion reveals that the petitioner was taking good care of her pregnancy by regular ANC and her mental status

examination reveals a conscious, oriented female with clinically normal, intellectual function and sound mind. The ultra sound findings shows an uncomplicated singleton live pregnancy of 28 weeks duration with no foetal or maternal complications. The Medical Board has also opined against medical termination of pregnancy considering the risk involved for the baby.

4. The medical evidence is definitely against grant of permission for termination of pregnancy. No doubt, the Apex Court has declared a woman's right to make reproductive choice, to be a dimension of her personal liberty (see **Suchita Srivastava and another v. Chandigarh Administration [(2009) 9 SCC 1]**). The question here is whether such liberty can transgress the restrictions/prohibition under the Medical Termination of Pregnancy Act in cases where neither the pregnant lady or the foetus have any

medical issues and the pregnancy was being taken good care of by the prospective mother, until she approached this Court. In this context, it will be apposite to consider certain amendments brought about by the Medical Termination of Pregnancy (Amendment) Act, 2021. By the amendment, sub-section (2) to Section 3 of the Principal Act is substituted with the following sub-sections;

"(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are.

of the opinion, formed in good faith, that

(i) the continuance of the pregnancy

would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1-For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2-For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2)

relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:

(a) a Gynaecologist:

(b) a Paediatrician;

(c) a Radiologist or Sonologist, and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be."

Thus, after the amendment, medical termination is not permissible when the pregnancy exceeds 24 weeks. As per Section 3(2B), the provision relating to the length of pregnancy will not apply when the termination is necessitated by the

diagnosis of any of the substantial foetal abnormalities by a Medical Board. As far as the instant case is concerned, the Medical Board has categorically opined that the pregnancy is of 28 weeks duration with no foetal or maternal complications. In the absence of any medical reasons referable to the petitioner or the foetus, economic backwardness or possibility of social stigma cannot compel this Court to transgress the statutory prohibition and grant permission for medical termination of pregnancy.

For the aforementioned reasons, the writ petition is dismissed.

Sd/-

V. G. ARUN
JUDGE

Scl/

APPENDIX OF WP(C) 33884/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE SCAN REPORT DATED
19.0-8.2022 ISSUED FROM THE TRAVANCORE
MEDICAL COLLEGE HOSPITAL , KOLLAM.