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WP-31119-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 8th OF OCTOBER, 2024WRIT PETITION No. 31119 of 2024*A MINOR**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

Appearance:

Ms. Divyakeerti Bohare, learned counsel for the petitioner.

Shri G.P. .Kekre, learned Government Advocate for the respondent/State.

ORDER

1. The present petition is preferred by the father of minor rape victim seeking directions from this Court to get terminated her pregnancy. The name of the victim has not been disclosed in this order in view of the provisions of Section 5A of the Medical Termination of the Pregnancy Act, 1971.

2. As per petition, the petitioner has completed her age of 14 years just few days back i.e. on 03.10.2024. An FIR was lodged at Police Station, Narmadapuram Dehat, District Narmadapuram registered as Crime No.482/2024 under Sections 376(3), 376(1), 506 (j) (ii) of POCSO Act, 2010 upon the complaint lodged by the petitioner at Police Station, Kotwali, District Betul on 18.09.2024. As per petition, the petitioner was subjected to sexual assault and rape by her relative and later on she was found pregnant. When report was lodged, she was having pregnancy of 26 weeks. The minor petitioner again examined by doctor on 01.10.2024 and it was found that the gestational age of the fetus is about 28 weeks and six days. As the petitioner is minor girl of tender age 14 and is not capable to take care of child and if permitted to give birth to a child, it will result in mental, physical, emotional and



social trauma, resultantly the petitioner and her parents have decided to go for medical termination of pregnancy and therefore, with the aid of High Court Legal Aid Committee, the present petition is preferred by the petitioner through her father for seeking permission to terminate the pregnancy of 28 weeks and six days.

3. This Court by order dated 04.10.2024 issued directions to the State to seek opinion of Medical Board to examine the petitioner and submit the report before this Court. On 05.10.2024, the Gandhi Medical College, Bhopal constituted a Medical Board of eight doctors i.e. one Professor, Representative of Superintendent, One Professor of Obstrics and Gynaecology Department, One Associate Professor, each from General Surgery, Pediatrics, Obstetrics and Gynaecology, Obstetrics and Gynaecology, Pathology and Radiodiagnosis to examine the petitioner and submit the report for the purpose of termination of pregnancy beyond 24 weeks. The opinion of the Medical Board for termination of Pregnancy reads as under :-

*"2. Opinion By Medical Board for termination of
Pregnancy :*

a) Allowed.

b) Denied : Denied

*The Gestational age of the fetus is more than 24 weeks
hence medical termination cannot be performed as per MTP
Act amendment 2021. In case of permission or order of MTP
by Honorable Court such termination can be performed with
all the explained risk of anticipated and unanticipated
complications related to termination of such high risk teenage
pregnancy. Termination of pregnancy at this gestational age*



and continuation of pregnancy, both carries risk of complications.

Yes"

4. The Medical Board after considering the age of fetus and age of the petitioner expressed the opinion that termination of pregnancy at this stage as well as continuation of pregnancy both carries risk of complications.

5. Before filing this petition, petitioner and her parents submitted an application before the Station House Officer, Police Station, Dehat, Narmadapuram with a request to arrange for termination of pregnancy. Meaning thereby, the petitioner and her parents are not interested in giving birth to child. SHO, Police Station, Dehat Narmadapuram forwarded the matter to the High Court Legal Aid Committee and the present petition has been preferred with the consent of the parents of the petitioner who is a minor girl.

6. It is submitted on behalf of the petitioner that petitioner being tender age of only 14 years is not physically capable of giving birth to a healthy child and if the pregnancy is not terminated the same will cause her mental, physical, emotional and social trauma, which will adversely affect her entire life, who is not only a rape victim but also an unmarried girl.

7. Supreme Court considering the right of personal liberty guaranteed under Article 21 of the Constitution of India has held that unmarried woman has right to decide in respect of the pregnancy and if she decides to terminate the pregnancy, it covers under the right of personal liberty of a citizen.

8. Supreme Court in the case of *X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi & Anr. (2023) 9 SCC 433*, after considering constitutional values animating the interpretation of MTP



Act and the MTP rules dealt with the right to Reproductive Autonomy of the women and has held as under:-

"64. When interpreting a sub-clause or part of a statutory provision, the entire section should be read together with different sub-clauses being a part of an integral whole. [BalasinorNagriik Coop. Bank Ltd. v. BabubhaiShankerlalPandya, (1987) 1 SCC 606; MadanlalFakirchandDudhediya v. Shree Changdeo Sugar Mills Ltd., 1962 SCC OnLine SC 65 : 1962 Supp (3) SCR 973 : AIR 1962 SC 1543] In terms of Section 3(2)(b) of the MTP Act, not less than two RMPs must, in good faith, be of the opinion that the continuation of the pregnancy of any woman who falls within the ambit of Rule 3-B would involve : (i) a risk to her life; (ii) grave injury to her physical health; or (iii) grave injury to her mental health. Alternatively, not less than two RMPs must, in good faith, be of the opinion that there is a substantial risk of the child suffering from a serious physical or mental abnormality, if born. Women who seek to avail of the benefit under Rule 3-B of the MTP Rules continue to be subject to the requirements of Section 3(2) of the MTP Act.

65. One of the grounds on the basis of which termination of pregnancy may be carried out is when the continuance of a pregnancy would involve risk of injury to the mental health of the woman. The expression "grave injury to her physical or mental health" used in Section 3(2) is used in an overarching and all-encompassing sense. The two Explanations appended to Section 3(2) provide the circumstances under which the anguish caused by a pregnancy may be presumed to constitute a grave injury to the mental health of a woman.

66. Courts in the country have permitted women to terminate their pregnancies where the length of the pregnancy exceeded twenty weeks (the outer limit for the termination of the pregnancy in the unamended MTP Act) by expansively interpreting Section 5, which permitted RMPs to terminate pregnancies beyond the twenty-week limit when it was necessary to save the life of the woman. In X v. Union of India [X v. Union of India, (2017) 3 SCC 458], MamtaVerma v. Union of India [MamtaVerma v. Union of India, (2018) 14 SCC 289], MeeraSantosh Pal v. Union of India [MeeraSantosh Pal v. Union of India, (2017) 3 SCC 462], SarmishthaChakraborty v. Union of India [SarmishthaChakraborty v. Union of India, (2018) 13 SCC 339], this Court permitted the termination of post twenty-week pregnancies after taking into account the risk of grave injury to the mental health of a pregnant woman by carrying the pregnancy to term.

67. The grounds for approaching courts differ and include various reasons such as a change in the circumstances of a woman's environment during an ongoing pregnancy, including risk to life, [A v. Union of India, (2018) 14 SCC 75; X v. Union of India, (2017) 3 SCC 458; MeeraSantosh Pal v. Union of India, (2017) 3 SCC 462; TapasyaUmeshPisal v. Union of India, (2018) 12 SCC 57; MamtaVerma v. Union of India, (2018) 14 SCC 289] risk to mental health, [X v. Union of India, (2017) 3 SCC 458; MeeraSantosh Pal v. Union of India, (2017) 3 SCC 462; SarmishthaChakraborty v. Union of India, (2018) 13 SCC 339; MamtaVerma v. Union of India, (2018) 14 SCC 289; Z v. State of Bihar, (2018) 11 SCC 572 : (2018) 2 SCC (Cri) 675] discovery of foetal anomalies, [A v. Union of India, (2018) 14 SCC



75; *SarmishthaChakraborty v. Union of India*, (2018) 13 SCC 339; *TapasyaUmeshPisal v. Union of India*, (2018) 12 SCC 57; *MamtaVerma v. Union of India*, (2018) 14 SCC 289] late discovery of pregnancy in case of minors and women with disabilities, [*X v. Union of India*, (2020) 19 SCC 806] and pregnancies resulting from sexual assault or rape. [*Z v. State of Bihar*, (2018) 11 SCC 572 : (2018) 2 SCC (Cri) 675; *X v. Union of India*, (2020) 19 SCC 806] These are illustrative situations thrown up by cases which travel to the court. Although the rulings in these cases recognised grave physical and mental health harms and the violation of the rights of women caused by the denial of the option to terminate unwanted pregnancies, the relief provided to the individual petitioner significantly varied.

68. The expression “mental health” has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The World Health Organisation defines “mental health” as a state of “mental well-being that enables people to cope with the stresses of life, realise their abilities, learn well and work well, and contribute to their community”. [World Health Organisation, “Promoting Mental Health : Concepts, Emerging Evidence, Practice (Summary Report)” (2004).] The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context. Our understanding of the term “mental health” cannot be confined to medical terms or medical language, but should be understood in common parlance. The MTP Act itself recognises the need to look at the surrounding environment of the woman when interpreting injury to her health. Section 3(3) states that while interpreting “grave injury to her physical or mental health”, account may be taken of the pregnant woman's actual or reasonably foreseeable environment. The consideration of a woman's “actual or reasonably foreseeable environment” becomes pertinent, especially when determining the risk of injury to the mental health of a woman.

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115. The right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being possesses dignity merely by being a human, and can make self-defining and self-determining choices. Dignity has been recognised as a core component of the right to life and liberty under Article 21.

116. If women with unwanted pregnancies are forced to carry their pregnancies to term, the State would be stripping them of the right to determine the immediate and long-term path their lives would take. Depriving women of autonomy not only over their bodies but also over their lives would be an affront to their dignity. The right to choose for oneself — be it as significant as choosing the course of one's life or as mundane as one's day-to-day activities — forms a part of the right to dignity. It is this right which would be under attack if women were forced to continue with unwanted pregnancies.

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122. In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although



human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the State is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women.”

9. In the matter of *A (mother of X) Vs. State of Maharashtra & Anr. SCC OnLine 668*, Supreme Court granted permission for termination of pregnancy by order dated 22.04.2024 even when the minor aged 14 years was in the 30th week of pregnancy, however, subsequently when the decision was taken by minor and her parents not to put the child at risk, the Supreme issued certain fresh directions.

10. Section 3 of the MTP is relevant to decide the present case which reads as under:

“3. When pregnancies may be terminated by registered medical practitioners.—

(1) xxx xxx xxx

(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 partner 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.”



11. In the matter of *Victim A Vs. State of M.P. & Ors. 2024 SCC OnLine MP 4096*, the Division Bench of this Court permitted for terminating pregnancy of minor rape victim. In another judgment delivered by the Division Bench of this Court in the matter of *A Minor Through Her Grandmother G Vs. State of M.P. & Ors. 2024 SCC OnLine MP 4966*, the permission was granted for termination of pregnancy of over 28 weeks. In that matter, the rape victim was minor and after considering the judgment delivered by the Supreme Court in the matter *X Vs. Principal Secretary (supra)*, the permission was granted. The relevant paragraphs are as under:

"17. In the case of A (Mother of X) (supra), the Supreme Court while considering the statements, objects and reasons of the MTP Act and also the aspect of physical and mental health of the pregnant person, held as under:-

"28. The powers vested under the Constitution in the High Court and this Court allow them to enforce fundamental rights guaranteed under Part III of the Constitution. When a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the Medical Board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the Medical Board. Therefore, the Medical Board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a Medical Board must examine the pregnant person and opine on the aspect of the risk to their physical and mental health.

29. The MTP Act has removed the restriction on the length of the pregnancy for termination in only two instances. Section 5 of the MTP Act prescribes that a pregnancy may be terminated, regardless of the gestational age, if the medical practitioner is of the opinion formed in good faith that the termination is immediately necessary to save the life of the pregnant person. Section 3(2-B) of the Act stipulates that no limit shall apply on the length of the pregnancy for terminating a foetus with



substantial abnormalities. The legislation has made a value judgment in Section 3(2-B) of the Act, that a substantially abnormal foetus would be more injurious to the mental and physical health of a woman than any other circumstance. In this case, the circumstance against which the provision is comparable is rape of a minor. To deny the same enabling provision of the law would appear prima facie unreasonable and arbitrary. The value judgment of the legislation does not appear to be based on scientific parameters but rather on a notion that a substantially abnormal foetus will inflict the most aggravated form of injury to the pregnant person. This formed the basis for this Court to exercise its powers and allow the termination of pregnancy in its order dated 22-4-2024 [A v. State of Maharashtra, 2024 SCC OnLine SC 608] . The 9 W.A. No.1661/2024 provision is arguably suspect on the ground that it unreasonably alters the autonomy of a person by classifying a substantially abnormal foetus differently than instances such as incest or rape. This issue may be examined in an appropriate proceeding should it become necessary.

30. Moreover, we are conscious of the fact that the decision to terminate pregnancy is one which a person takes seriously. The guidelines to terminate pregnancy as well as the scheme of the MTP Act show the seriousness attached to the well-being of the pregnant person throughout the process envisaged under the MTP Act. Change in the opinion of the Medical Board may cause undue trauma and exertion to a pregnant person whose mental health is understandably under distress. While we understand the need for a Medical Board to issue a clarificatory opinion based on the facts and circumstances of each case, the board must explain the reasons for the issuance of the clarification and, in particular, if their opinion has changed from the earlier report. Pregnant persons seeking termination of pregnancy seek predictability for their future. The uncertainty caused by changing opinions of the Medical Board must therefore balance the distress it would cause to the pregnant person by providing cogent and sound reasons.”

18. In A (Mother of X) (supra), the Supreme Court by order dated 22.04.2024 had permitted the termination of pregnancy even when the minor was in the 30th week of her pregnancy. However, subsequently, the decision was taken by the minor and parents not to put the child at risk.

19. In the instant case, as noticed above, the latest medical opinion suggests that the pregnancy is a high risk pregnancy. There is high risk in both, taking the pregnancy to term and in



termination of pregnancy. A conscious decision has been taken by the guardian of the minor as also the minor girl to proceed further with the termination of pregnancy. This is coupled with the fact that an offence of rape has been committed on the minor and the guardian of the minor is an aged woman of 60 years who is solely taking care of the minor and states that she would be unable to take care of the minor and the baby.

*20. Reference may be had to an order of the Coordinate Bench of this Court in **Victim X vs. Superintendent of Police**, dated 09.05.2024 passed in W.A. No.1078 of 2024 wherein the Coordinate Bench in similar circumstances has permitted termination of pregnancy where the foetus had exceeded the age of over 30 weeks."*

12. The Supreme Court in the case of ***Murugan Naika Vs. Union of India in W.P.(Civil) No.749/2017*** permitted to terminate the pregnancy of 13 years minor girl after considering the provisions of MTP Act.

13. In the similar circumstances, the coordinate Bench of this Court in the matter of ***Victim A (Minor) through her father Vs. State of M.P. & Anr. 2024 MP OnLine 5279*** permitted for termination of pregnancy over 27 weeks by order dated 20.08.2024.

14. Section 3(2) (a) provides for terminating the pregnancy where the length of pregnancy does not exceed to 20 weeks and where it exceeds to 20 weeks and less than 24 weeks, pregnancy may be terminated with the decision of two medical practitioners. Explanation 2 of Section 3(2) (b) provides that if any pregnancy is allegedly caused by rape, the said pregnancy shall constitute grave injury to mental health of pregnant women.

15. In the present matter, the petitioner is minor aged only 14 year and is a rape victim and in the opinion of the Medical Board, the continuation of the pregnancy also carries risk of complication. It is submitted by counsel for the petitioner that victim as well as her parents have decided not to proceed further with the pregnancy, which also carries risk of complications. The minor was unaware of the fact that she was pregnant until a very late stage. The pregnancy is



alleged to emanation from a sexual assault which has resulted in the registration of a first information report. The FIR was recorded on 25.09.2024 beyond the period of 24 weeks envisaged in the MTP Act. Considering the decisions of the petitioners and her parents, the present petition is allowed. This Court permits the termination of the pregnancy subject to following conditions :

- (i) The procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors.
- (ii) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to her.
- (iii) The post operative care up to the extent required, will be extended to the petitioner. It will be the duty of the State Government to take care of the child, if born alive.
- (iv) The doctors will also ensure that a sample from the foetus is protected for DNA examination and as and when required will be handed over to the prosecution for using in the criminal case itself.
- (v) A specialized team of Doctors shall take a decision as to when to terminate the pregnancy. All necessary care and caution shall be taken by the Doctors while carrying out the procedure for termination of the pregnancy.
- (vi) State shall bear all the expenses in connection with the procedure and all medical expenses required in the interest of safety and welfare of the minor.

16. The copy of this order be forwarded to the concerned police station for placing in the police case diary. Copy of this order shall be also forwarded by learned Government Advocate to Dean, Gandhi Medical College, Bhopal immediately for compliance.

17. This order be uploaded on the official website of M.P. High Court and the same shall be treated as certified copy.

(VINAY SARAF)
JUDGE



P/-