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WP-19343-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 22nd OF MAY, 2025

WRIT PETITION No. 19343 of 2025

PROSECUTRIX X

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Girish Kekre - Government Advocate for the respondents/State.
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ORDER

The instant petition is registered upon the reference made by the 4th Additional Sessions Judge, Nainpur, District Mandla, whereby it is intimated to the Registrar General of this Court that during investigation of Crime No.26/2025 registered at Police Station Khatia under Section 64, 62(2)(M), 137(2), 87 of BNS, 2023 and 5(j)(ii), 5(L) and 6 of POCSO Act, 2012, the minor victim has found pregnant.

2. It is also mentioned in the reference letter that from the Gynecologist of District Hospital Mandla, opinion was sought and she has opined that fetus is of 29 weeks 06 days and therefore, there will be risk of life to the victim in case of medical termination of pregnancy. Upon the reference, present petition has been registered and listed before this Court.

3. With the reference letter, a letter signed by the victim and her parents is annexed, wherein the victim and her parents have shown their willingness to continue with the pregnancy and give birth to the child.

4. As per the report of Gynecologist on 14.5.2025, the fetus of about 29 weeks 6 days and today fetus is about 31 weeks. As per Section 3 of Medical



Termination of Pregnancy Act, 1971, pregnancy upto 20 weeks may be terminated by a registered medical practitioner and where the pregnancy exceeds twenty weeks but does not exceeds twenty four weeks, by two registered medical practitioner and if pregnancy is more than 24 weeks, matter should be referred to the High Court and in such cases, High Court may exercise its power under Article 226 of the Constitution of India for passing orders for termination of pregnancy.

5. The Division Bench of this Court I *n Reference (SUO MOTU) vs. The State of M.P. and others* , *W.P. No.5184/2025*, by order dated 20.02.2025 has laid down the procedure for dealing with the cases of pregnancy of survivor of sexual assault or rape or incest is exceeding 24 weeks:-

(b) SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is exceeding 24 Weeks:-
Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;

(ii) The learned Judge of the District Court preferably Special Judge/POCSO), regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;

(iii) The District Court, preferably Special Judge/POCSO, after obtaining the said medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the



High Court;

(iv) The Registry of High Court, in turn, shall register such reference as a Writ Petition under Article 226 of the Constitution, Suo Motu, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by the High Court without any undue delay;

(v) If directed by the High Court that termination of pregnancy is required then, 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;

(vi) 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 the victim;

(vii) The post operative care, upto the extent required, will be extended to the victim;

(viii) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

6 . 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.

7. 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. [Balasinor Nagrik Coop. Bank Ltd. v. Babubhai Shankerlal Pandya, (1987) 1 SCC 606; Madanlal Fakirchand Dudhediya 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] , Mamta Verma v. Union of India [Mamta Verma v. Union of India, (2018) 14 SCC 289] , Meera Santosh Pal v. Union of India [Meera Santosh Pal v. Union of India, (2017) 3 SCC 462] , Sarmishtha Chakraborty v. Union of India [Sarmishtha Chakraborty 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; Meera Santosh Pal v. Union of India, (2017) 3 SCC 462; Tapasya Umesh Pisal v. Union of India, (2018) 12 SCC 57; Mamta Verma v. Union of India, (2018) 14 SCC 289] risk to mental health, [X v. Union of India, (2017) 3 SCC 458; Meera Santosh Pal v. Union of India, (2017) 3 SCC 462; Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339; Mamta Verma 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 5; Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339; Tapasya Umesh Pisal v. Union of India, (2018) 12 SCC 57; Mamta Verma 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 recognizing 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.



8. In the matter of A (mother of X) Vs. State of Maharastra & Anr. 2024 SCC OnLine SC 608, 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."

9. The Supreme Court by order dated 29.4.2024 had noted that even after granting the permission for medical termination of pregnancy by the Supreme Court, the minor victim has shown her willingness to give the birth to a child. Under that circumstances, the Supreme Court has passed the fresh order by holding that the decision to terminate the pregnancy is one which a person takes seriously and the opinion of the pregnant person must be given primacy in evaluating foreseeable environment of the person under Section 3(3) of MTP Act. The Supreme Court has further held that, if minor pregnant and her parents are willing to continue with the pregnancy, the same should be respected. The decision should be taken in light of the decisional and bodily autonomy of the pregnant person and her parents. The MTP does not allow any interference with the personal choice of a pregnant person in terms of proceedings with the termination. The relevant portion of the judgment reads as under:-

Primacy of the pregnant person's consent in abortion

32. As noted above, the order of this court allowing 'X' to terminate her pregnancy is recalled. This decision is made in light of the decisional and bodily autonomy of the pregnant person and her parents. The MTP Act does not allow any interference with the personal choice of a pregnant person in terms of proceeding with the termination. The Act or indeed the jurisprudence around abortion developed by the courts leave no scope for



interference by the family or the partner of a pregnant person in matters of reproductive choice.

33. As stated above, the role of the RMPs and the medical board must be in a manner which allows the pregnant person to freely exercise their choice. In the present case, the guardians of 'X', namely her parents, have also consented for taking the pregnancy to term. This is permissible as 'X' is a minor and the consent of the guardian is prescribed under Section 3(4)(a) of the MTP Act.

*34. In **Suchita Srivastava v. Chandigarh Admn.**, a three-judge Bench of this Court has held that the right to make reproductive choices is a facet of Article 21 of the Constitution. Further, the consent of the pregnant person in matters of reproductive choices and abortion is paramount. The purport of this Court's decision in **Suchita Srivastava** (supra) was to protect the right to abortion on a firm footing as an intrinsic element of the fundamental rights to privacy, dignity and bodily integrity as well as to reaffirm that matters of sexual and reproductive choices belong to the individual alone. In rejecting the State's jurisdiction as the parens patriae of the pregnant person, this Court held that no entity, even if it is the State, can speak on behalf of a pregnant person and usurp her consent. The choice to continue pregnancy to term, regardless of the court having allowed termination of the pregnancy, belongs to the individual alone.*

35. In the present case the view of 'X' and her parents to take the pregnancy to term are in tandem. The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution. Therefore, where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor while deciding the termination of the pregnancy.



Conclusion

36. In the facts and circumstances of this case, we issue the following directions:

(i) The Sion hospital shall bear all the expenses in regard to the hospitalization of the minor over the past week and in respect of her re-admission to the hospital for delivery as and when she is required to do so; and

(ii) In the event that the minor and her parents desire to give the child in adoption after the delivery, the State Government shall take all necessary steps in accordance with the applicable provisions of law to facilitate this exercise. This shall not be construed as a direction of this Court binding either the parents or the minor and the State shall abide by the wishes as expressed at the appropriate stage.

37. In light of the issues which arose before this Court we record our conclusions as follows:

(i) The MTP Act protects the RMP and the medical boards when they form an opinion in good faith as to the termination of pregnancy;

(ii) The medical board, in forming its opinion on the termination of pregnancies must not restrict itself to the criteria under Section 3(2-B) of the MTP Act but must also evaluate the physical and emotional well being of the pregnant person in terms of the judgment;

(iii) When issuing a clarificatory opinion the medical board must provide sound and cogent reasons for any change in opinion and circumstances; and

(iv) The consent of a pregnant person in decisions of reproductive autonomy and termination of pregnancy is paramount. In case there is a divergence in the opinion of a pregnant person and her guardian, the



opinion of the minor or mentally ill pregnant person must be taken into consideration as an important aspect in enabling the court to arrive at a just conclusion.

10. In the case at hand, the pregnant and her parents have shown their willingness to continue with the pregnancy and give birth to a child and Gynecologist has also opined that the fetus is more than 29 weeks., therefore, there will be life threatening risk to the victim.

11. Under these circumstances, no direction can be issued for medical termination of the pregnancy of the victim and the present petition is disposed of with the following directions:-

(i) The State will provide all available medical facilities through specialist team of doctors to permit the victim give birth to a child.

(ii) All the expenses shall be born by the State in connection with the procedure of giving birth to the child.

(iii) All necessary care and cautions shall be taken by the doctors during the period of pregnancy and at the time of delivery of a child and thereafter as and when required.

(iv) Post delivery care will be extended to the victim and it will be duty of the State Government to take care of the child as per the settled norms.

(v) The State Government shall provide the free education to the child up to Class-12th.

(vi) All medical facilities will be made available to the child by the State Government, till child attains the majority.

(vii) The name of victim and child will not be disclosed in any manner.

(viii) The State Government shall consider to form a policy to provide the facilities for food, shelter, education safety of the children given birth by the



survivors of sexual assault, or rape or incest.

12. With the aforesaid directions, present petition is disposed of.
13. A copy of this order be forwarded to 4th Additional Sessions Judge,
Nainpur, District Mandla,

(VINAY SARAF)
V. JUDGE

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