

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
ACTING CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 25th OF JULY, 2024

WRIT APPEAL No. 1661 of 2024

A MINOR THROUGH HER GRANDMOTHER G

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Ms. Divyakeerti Bohrey - Advocate for appellant.

Shri Ritwik Parashar - Government Advocate for respondents/State.

ORDER

Per: Sanjeev Sachdeva, Acting Chief Justice

1. Appellant impugns order dated 22.07.2024 whereby the prayer for termination of pregnancy has been declined on the ground that the foetus is over 28 weeks.
2. Subject petition has been filed by the grandmother of the minor girl. It is contended that the parents of the minor girl were separated from the grandmother and were living separately and the child has been brought up by the maternal grandmother from a very early age.
3. In the impugned order, the learned Single Judge has noticed the opinion of the Board part of which has been extracted in the order. For the sake of convenience, the part of the report is extracted herein:-

“5. 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 and the survivor having mild intellectual disability. Termination of pregnancy at this gestational age and continuation of pregnancy, both, carries risk of complications.

*6. Physical fitness of the woman for the termination of pregnancy:
Yes”*

4. Learned Single Judge referring to the medical report has held that in view of the medical report and the fact that the FIR that has been lodged by the grandmother of the girl is suspicious, no case is made out for terminating the pregnancy.

5. Insofar as the observation of the learned Single Judge with regard to the lodging of the FIR being suspicious is concerned, we find that there is no material to substantiate that observation. Accordingly, the observation in the impugned order that the lodging of the FIR by the grandmother of the petitioner is suspicious, is expunged.

6. Reference may be had to the judgment of the Supreme Court in **A (Mother of X) vs. State of Maharashtra & Another, 2024 (6) SCC 327** wherein the Supreme Court has held that opinion of the pregnant person must be given privacy in evaluating the foreseeable environment of the person under Section 3 (3) of the Medical Termination of Pregnancy Act, 1971. Further, Supreme Court has held that the consent of a pregnant person in decision of reproductive autonomy and termination of pregnancy paramount and in case, there is a diversion in the opinion of the 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.

7. The appeal was mentioned and listed before us on 24.07.2024 when we noticed that there was no consent of the minor as is held to be an essential condition by the Supreme Court in **A (Mother of X) vs. State of Maharashtra & Another, 2024 (6) SCC 327.**

8. Keeping in view the observation of the Supreme Court in **A (Mother of X) (supra)**, we directed the Principal District Judge, Bhopal to nominate a Lady Judicial Officer to visit the girl at the hospital and obtain her independent informed decision with regard to termination of her pregnancy. We also directed that the concerned Gynaecologists shall also accompany the Lady Officer so as to explain to the minor girl consequences about the eventualities.

9. Pursuant to the said order, the Principal District Judge nominated Ms. Palak Rai, Judicial Magistrate First Class, Bhopal to visit the girl. The Judicial Magistrate visited the girl at 8:30 in the night. She was accompanied by Dr. Smt. Shubha Shrivastava and Dr. Preksha Gupta. A report has been submitted. The report *inter alia* reads as under:-

“पीडिता वार्तालाप करने में एवम प्रश्न उत्तर की प्रकृति समझने में सक्षम प्रतीत हुई है। मेरे समक्ष स्त्री रोग विशेषज्ञ डॉक्टर शुभा श्रीवास्तव व डॉक्टर प्रेक्षा गुप्ता के द्वारा अवयस्क पीडिता को समय पूर्व गर्भ समापन की जटिलता से अवगत कराया गया । डॉक्टर श्रीमती शुभा श्रीवास्तव व डॉक्टर प्रेक्षा गुप्ता के द्वारा यह प्रकट किया गया कि चिकित्सीय रूप से अवयस्क पीडिता की आयु 15 वर्ष होकर उसे 28 सप्ताह 05 दिन का ग्रभ है, जिसे समय पूर्व समापन किये जाने पर अद्योलिखित जटिलतायें उत्पन्न हो सकती हैं:-

1. विशेषज्ञ मनोचिकित्सक द्वारा पीडिता की मानसिक आयु 6.5 वर्ष होना बताई गई है।

2. पीडिता का गर्भ 28 सप्ताह 5 दिन का है जिस कारण ऑपरेशन करने की सञ्भावना उत्पन्न हो सकती है।
3. ऑपरेशन/डिलेवरी के पश्चात अधिक रक्तस्राव होने से पीडिता के जीवन को खतरा होने की सञ्भावना है एवं पीडिता के गर्भाशय के आसपास के अण्डो को क्षति पहुँच सकती है।
4. पीडिता को आईसीयू में भी भर्ती करना पड सकता है।
5. पीडिता की उम्र कम होने से यह एक हाई रिस्क प्रिगनेन्सी है एवं प्रिगनेन्सी को बढ़ाने या डिलीवरी कराने में पीडिता को जान का खतरा बना रहेगा ।

इस प्रकार चिकित्सीय तौर पर समस्त तथ्य अवयस्क पीडिता को बताये जाकर उसके परिजन को पृथक से भी उक्त तथ्य प्रकट किये गये । अवयस्क पीडिता का स्वतंत्र निर्णय है कि उसके द्वारा धारित गर्भ का समय पूर्व समापन किया जावे।“

10. As per the report, the Judicial Magistrate has noticed that though the mental age of the girl was 6.5 years, however, she was of mature understanding and able to understand her surrounding and respond to the questions.

11. The medical opinion is that the pregnancy is a high risk pregnancy and there are complications both in taking the pregnancy to its term as also of termination of pregnancy and there is risk to the life of the child, in both circumstances.

12. The Judicial Magistrate has noticed that at the time of her visit both the parents of the child were also present. The statement of the child has been recorded. She has stated that she does not wish to continue with the pregnancy as she is not in a position to take care of the child. The grandmother of the child has also stated that she is aged about 60 years and is already taking care of the minor girl and is not in a position to take care of the child, if born.

13. Reference may be had to the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 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.”

14. Section 3(2)(a) of the Act permits termination of pregnancy by registered medical practitioner in cases where length of pregnancy does not exceed 20 weeks or where it exceeds 20 weeks but does not exceed 24 weeks, if the continuance of pregnancy would involve a risk to life of pregnant woman or grave injury to the physical or mental health.

15. Explanation 2 to Section 3(2)(b) provides that for the purposes of Clause (a) and (b) where 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.

16. In the instant case, the pregnancy is over 28 weeks and has been caused on account of the girl being raped. FIR No.629/2024 Police Station Nishatpura under Sections 376(2)(n), 366A, and 506 of IPC and Sections 5 and 6 of POCSO Act has been registered on 07.07.2024. Reference may be had to the judgment of the Supreme Court in **X vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, 2023 (9) SCC 433** wherein the Supreme Court considered the constitutional values animating the interpretation of MTP Act and MTP Rules and dealt with the Right to Reproductive Autonomy of a woman. The Supreme Court held that the MTP Act is an aid to interpretation understanding injury to mental health and 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 75; 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.”

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

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.

21. In view of the above, the petition is allowed. This court permits the termination of pregnancy subject to the 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 specialised 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.

22. Petition is allowed in the above terms.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

(VINAY SARAF)
JUDGE