

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 14775 of 2024**

XYZ THROUGH HER FATHER
Versus
STATE OF GUJARAT & ANR.

Appearance:

MR YOGESH K MANGHANI(13921) for the Applicant(s) No. 1
PRERAK P OZA(8279) for the Applicant(s) No. 1
MR RONAK RAVAL APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 08/11/2024****ORAL ORDER**

1. The petitioner has approached this Court seeking following reliefs:

“(A) Your Lordships may be pleased to grant permission to the daughter of the petitioner – minor victim to terminate the pregnancy of 24 weeks at the earliest, as the continuance of pregnancy would cause grave injury to the daughter of the petitioner – victim, in the interest of justice.

(B) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents to undertake necessary medical tests of petitioner – victim by the qualified surgeon/s including Gynecologist, Obstetrician, in presence of a qualified physician with due care and precaution, so as to avoid any likelihood of untoward harm to the physical or mental health of petitioner, and to submit report thereof to this Hon’ble Court with immediate effect or at the earliest as deemed fit and proper to the Hon’ble Court for its subjective satisfaction.

(C) Pending admission, hearing and final disposal of this petition, Your Lordship be pleased to grant permission to the daughter of the petitioner – minor victim to terminate the

pregnancy as the continuance of pregnancy would cause grave injury to the petitioner – victim as the pregnancy is of 24 weeks presently in the interest of justice.

(D) The Honourable Court be pleased to grant such other and further orders, as this Honourable Court may deem fit and proper in the facts and circumstances mentioned above.”

2. This application is filed by the petitioner who is the father of victim since the victim is minor and, therefore, she has been referred to as ‘the applicant / victim’ in the entire order. Registry is also directed to anonymize the name of the victim in the judgment and all orders that may be passed as well as in the records which are publicly available.

3. The facts leading to the filing of the present petition are as under:

3.1 The victim, who is aged 16 years, is victim of rape pursuant to which FIR being C.R. No.11202014240687 of 2024 is registered with Dhrol Police Station, Jamnagar dated 06.10.2024 for commission of alleged offences punishable under Sections 87 and 64(2)(m) of the Bhartiya Nyaya Sanhita, 2023 along with sections 4 and 6 of the Protection of Children from Sexual Offences Act,2012.

3.2 It is the case of the petitioner that on 14.10.2024 it had come to the knowledge of the applicant’s father after the victim was examined on 14.10.2024 at Department of Radiodiagnosis, Jamnagar that the victim was carrying pregnancy of 21 weeks and 06 days and, therefore, applicant has requested this Court to allow the victim to undergo the termination of the pregnancy on the grounds

mentioned in the petition.

3.3 On 30.10.2024, the coordinate Bench of this Court had passed the following order.

“1. The present petition, under Article 226 of the Constitution of India read with the Medical Termination of Pregnancy Act, 1971, is filed by the applicant – minor girl – victim, through her guardian seeking direction to the respondent authority to terminate 24 weeks’ pregnancy of the victim girl, who is aged about 16 years.

2. Heard learned advocates.

3. Considering the submissions and also considering the averments made in this application, it transpires that on 29.06.2024, the victim girl has run away with the accused and when she could not find, the complaint has been lodged regarding the same; and that pending investigation, it was found that she has flee away with the accused under the false pretext of marrying despite knowing that she is a minor and had developed physical relation with her; and that now, she is pregnant and carrying pregnancy of about 24 weeks, as averred. Therefore, the applicant prays for termination of the said foetus in view of the provisions of the Medical Termination of Pregnancy Act, 1971.

4. It is noted that the victim girl is aged about 16 years and guardian / father has prayed for the termination of the said pregnancy.

5. Under the peculiar facts and circumstances of the case, respondent No.2 – Authority shall examine the victim girl viz., ██████████ about the mental and physical fitness and send the report thereof to this Court on or before 07.11.2024 regarding the same along with the opinion as to whether any resultant effect shall be made or not if termination of pregnancy shall be carried out.

Re-list on 07.11.2024. Direct service today is permitted.”

3.4 The matter was thereafter listed on 07.11.2024 and on 07.11.2024, the Head of Department forwarded the report dated 04.11.2024. The said report reads as under:

“GG Hospital, JAMNAGAR, 4/11/2024.
TO,
Shri Mr
Sandeep N. Bhatt
The High Court Judge,
Ahmedabad.

Opinion of panel doctors as requested by respected High Court, Ahmedabad order on 30-10-2024 (order no.14775/2024)

The following panel doctors of Obstetrics & Gynaecology Dept, GGH have investigated the case.

- 1) Dr.Darshana Utturkar, Asst.Professor, Obstetrics & Gynaecology Dept.
- 2) Dr.Priti Punatar, HOD & Addl. Professor, Obstetrics & Gynaecology Dept.
- 3) Dr.Balbhadrasinh Jadeja, Assi.Professor, Psychiatric Dept.
- 4) Dr.Meera Zala, Ass.Professor, Anaesthesia Dept.
- 5) Dr.Manish Mehta, HOD & Professor, Medicine Dept.

After History with clinical examination and ultrasound examination, victim [REDACTED], age 16 year 2 months is found to have single intrauterine pregnancy of average gestational age 24 weeks 4 days [as per ultrasound report dated, 4/11/2024 done by Dr.Datesh Amrutiya SR (Md radiodiagnosis). Continuation of pregnancy at this juncture is more advisable. However, if MTP is performed risk of complications would be hemorrhage, retained tissue bits, uterine perforation, cervical laceration, uterine bleeding, post partum infections, future infertility, DIC & amniotic fluid embolism. Uncontrolled hemorrhage may require hysterectomy, the frequency of which increases with weeks of pregnancy.

Sd/-
Dr.Darshana Utturkar
Assistant Professor
Obs & Gynae Dept.
GG Hospital, Jamnagar

Sd/-
Dr.Priti Punatar
HOD & Additional Professor
Obs & Gynae Dept.
GG Hospital, Jamnagar

According to Psychiatrist,
There are no signs and symptoms of any psychiatric illness at present.

Sd/-
Dr.Balbhadrasinh Jadeja,
Assis.Professor,
Psychiatric Dept. GGH Jamnagar

“As she is tobacco chewer, lean and thin, this patient will be anaesthetised under ASA grad-1”

Sd/-
Dr.Meera Zala,
Assi.Proff.
Dept. of Anaesthesia
GGH, Jamnagar

“At present, on clinical and physical examination no major medical illness or abnormality found so patient is medically fit for procedure”

Sd/-
Dr.Nidhi Mehta
Assi.Professor
Medicine Dept.
GGH, Jamnagar.

FORM D

[See sub-clause (ii) of clause (b) of rule 3 A]

Report of the Medical Board for Pregnancy Termination Beyond 24 weeks

Details of the woman seeking termination of pregnancy:

1. Name of the woman: [REDACTED]
2. Age: 16 years
3. Registration/ Case Number : 20240632768
4. Available reports and investigations:

S.No.	Report	Opinion on the findings
1	Ultrasonography of abdomen S/O 24 weeks 4 days single intrauterine fetus	The USG report does not suggest any major foetal malformation that has substantial risk of it being incompatible with life.

5. Additional investigations: (if done)

S.No.	Investigations done	Key findings
1	Complete blood count	Within normal limit
2	Renal function test – s. creatinine s. urea	Within normal limit
3	Liver functions test – bilirubin SGPT Protein	Within normal limit
4	S. Na, S.K.	Within normal limit
5	ECG	Within normal limit

6. Opinion by Medical Board for termination of pregnancy:

- a: Allowed
b) Denied

Justification for the decision:

Medical Termination of Pregnancy in the current case with a Gestational age of 24 weeks & 4 days is denied in this case based on the following:

1. The procedure carries a substantial risk of complete or partial placental retention, spontaneous uterine, rupture, maternal haemorrhage & hysterectomy, which may lead to possible morbidity or mortality in the patient.
2. The USG report does not suggest any major foetal malformation that has substantial risk of it being incompatible with life.
3. If born alive, during the procedure the baby has a possibility of mortality and long term sequelae, since survival chance of 42-59% for births at 24 weeks and a 30% chance of developing severe or moderate neurodevelopment impairment, at 24 weeks (reference: Perivale Birth – The Ethical Conundrum, Indian Pediatrics 2019;56: 13-17)
7. Physical fitness of the woman for the termination of pregnancy:

A. Yes

Members of the Medical Board who reviewed the case:

S.No.	Name	Designation	Signature
1	Dr.Priti Punatar	Chairperson: I/c. Head of Obgy department	Sd/-
2	Dr.Nadini Bahari	Member: Head of Radiology department	Sd/-
3	Dr.Maulik Shah	Member: Asso.Prof. Pediatric department	Sd/-
4	Dr.Balbhadrasingh Jadeja	Member: Assi.Pfor. of Psychiatry department	Sd/-
5	Dr.P.R.Saxena	Member: R.M.O. / civil surgeon	Sd/-
6	Ms.Trupiti Gosai	Member: Psychiatrist Counselor	Sd/-

Moreover, along with the said report Dr.Darshana Utturkar, dated 05.11.2024, who had opined that she had briefed the victim about the pregnancy and the victim had clearly indicated that she wants to go for termination of pregnancy. The said doctor has also stated in her report that the said doctor has briefed the victim about other formalities but the victim has informed that she wants to get pregnancy terminated.

3.5 On going through the report and the letter dated 05.11.2024, learned advocate for the applicant sought time to file further affidavit pursuant to the report dated 04.11.2024 and letter dated 05.11.2024 and the learned APP had also sought time for getting clarification with regard to medical report and thereafter the matter was listed today i.e. on 08.11.2024.

4. Today the learned advocate for the applicant filed further affidavit on behalf of the petitioner and in the said affidavit, which is taken on record, stated that petitioner has taken the consent of victim for the termination of pregnancy and that the victim has expressed her willingness to undergo the procedure and has conveyed her understanding of the said decision. In the said affidavit, it has been stated that the petitioner has also been made aware about the risk of potential complication associated with the termination of pregnancy and that the petitioner and the victim understand the medical complication and possible outcome of the procedure and that the petitioner and victim are ready and willing to proceed with the termination of pregnancy of the victim and that the consent of the victim has also been obtained.

5. Learned Additional Public Prosecutor has today produced a further report of panel of experts dated 07.11.2024, which is in continuation of the previous report dated 05.11.2024 in which the team of the doctors viz. (i) Dr.Nalini I. Anand (HOD OBGY Department), (ii) Dr.Nadini Bahari (HOD Rediology Department), (iii) Dr.Maulik Shah (Asso.Professor, Paediatric Department), (iv) Dr.P R Saxena (RMO, GG Hospital, Jamnagar) and (v) Dr.Balbhadrasingh

Jadeja (Assit. Professor, Psychiatric Department) has opined as under:

“Subject. Opinion of expert panel of gynaecologist for termination of pregnancy

Respected Sir,

With reference to letter from The High Court of Gujarat dated 30/1/2024, R/SPECIAL CRIMINAL APPLICATION NO.14775/2024, in continuation of previous report dated on 05/11/2024 of victim 16 years old girl, Miss [REDACTED] having pregnancy of 24 weeks 5 days as per her USG (ultrasonography) ANC (antenatal check-up) report dated on 5/11/2024 at present(today). As victim's age is less than 18 years, continuation of pregnancy may be harmful physically as well as psychologically and her parents want termination of pregnancy. According to the MTP act, considering her teen-age and associated teenage pregnancy with adverse physical and psychological adverse consequences, medical termination of pregnancy can be done with due risks associated with termination Weeks of pregnancy at 24 weeks 5 days.

Risk and complications associated with termination of pregnancy at 24 weeks 5 days, includes retained products of conception, bleeding, infection, uterine rupture etc. which may need surgical intervention (preterm caesarean section) and also can cause psychological complications. The mortality (death) risk is 0.6/100000.”

6. Section 3 of the Medical Termination of Pregnancy Act, 1971 (herein after referred to as ‘the MTP Act’, for short) reads as under:

“3: When pregnancies may be terminated by registered medical practitioners

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(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 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 such physical or mental abnormalities.

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 clause (a) and (b) where any pregnancy is alleged by the present 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 pregnancy 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]

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4)

(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a ["mentally ill person"] , shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.” _

From the explanation, more particularly Explanation-2, it can be spelled out that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

7. It is the case of the present petitioner that looking at the age of the victim, who is merely of 16 years and 02 months, the victim will not be fit for responsibility of raising child at this tender age and that if the victim continues with the pregnancy it would adversely affect her physical and mental health.

8. At this stage, the Court has to consider the decision wherein ‘the best interest’ of the victim and consider her trauma, mental

agony and possibility of social ostracism of continuing with the pregnancy.

9. In the present case, more particularly the opinion of the expert panel dated 07.11.2024 clearly states that continuation of pregnancy may be harmful physically as well as psychologically and the said report also opines that considering the age of victim, the medical termination of pregnancy can be done with due risk associated with the termination of pregnancy of 24 weeks and 5 days and as such the doctors have opined that termination of pregnancy can be done.

10. It is submitted on behalf of the petitioner that victim is not physically capable of taking care of child if the pregnancy is not terminated 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 minor but also a rape victim.

11. Looking at the report dated 04.11.2024 wherein it has been observed that continuation of pregnancy, at this juncture, is more advisable and the justification for the said decision has been given in the said report. But thereafter the said report has been clarified by further report dated 07.11.2024 wherein it has been observed that continuation of pregnancy is harmful to physical and mental health of the victim and that medical termination of pregnancy can be done with due risk associated with termination of 24 weeks 05 days and the fact that further affidavit has also been filed wherein

father of the victim has stated that he is made aware of the risk of potential complication associated with the termination of pregnancy and that consent of the minor / victim has also been taken. The guidelines for termination of pregnancy as well as the scheme of MTP Act show the seriousness attached to the well being of pregnant person throughout the process envisaged under MTP Act. Moreover, the opinion of the pregnant woman must be given primacy and the fact that on 05.11.2024 she has given her consent before the doctor and in the further affidavit filed on behalf of the petitioner the said consent of the minor herself and her father continues and, therefore, once the victim does not want to continue with the pregnancy then this Court cannot compel her to continue with the pregnancy.

12. The Honourable Supreme Court has held that right of personal liberty guaranteed under Article 21 of the Constitution of India gives her 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.

13. In the case of *X vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi & Anr.*, (2023) 9 SCC 433, the Hon'ble Supreme Court 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. 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 3B 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 3B 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 75 [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; [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 and pregnancies resulting from sexual assault or rape. These are illustrative situations thrown up by cases which travel to the court. Although the rulings in these cases recognized 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 Organization defines mental health as a state of “mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community.” 79 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 recognizes 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 recognized 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.

14. In the case of *A (Mother of X) vs. State of Maharashtra & Anr.* rendered in Civil Appeal No.5194 of 2024, the Hon'ble Supreme Court had granted permission for termination of pregnancy to the minor girl by the order dated 22.04.2024 wherein the pregnancy was of 29.6 weeks, however, subsequently when the decision was taken by minor and her parents not to put the child at risk, the Hon'ble Supreme Court issued certain fresh directions.

15. Looking to the facts of the present case, the victim is minor aged 16 years and is a rape victim and in the opinion of the doctors, the continuation of pregnancy may be harmful to her physically as well as psychologically and the fact that medical termination of pregnancy can be done coupled with the fact that parents of the victim are also desirous of termination of pregnancy and in view thereof further affidavit is filed today wherein also the father of the victim has given consent and expressed willingness to undergo with the process of termination of pregnancy, and the fact that neither the victim nor her parents were aware about the fact that victim was pregnant until she was examined on 14.10.2024 wherein it was found that she was pregnant of 21 weeks and 6 days and, therefore, the minor was also not aware of the fact that she was pregnant until last stage. The pregnancy is caused because of the incident of rape.

16. Apparently, in terms of Explanation-2 for the purpose of

clause (a) and (b) of sub-section (2) of Section 3 of 'the MTP Act', whensoever any pregnancy is alleged by 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.

17. Looking at the facts of the present case and the fact that victim, who is aged 16 years, the victim would suffer grave injury to her mental and physical health if she will be forced to continue with the pregnancy at such a tender age apart from above the victim will suffer from social stigma also.

18. Moreover as per the judgment reported in case of *XYZ vs. State of Gujarat*, 2023 SCC Online SC 1573, the Hon'ble Supreme Court has held that right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy and, therefore, the victim has right to choice whether to give birth to child or to get terminated her pregnancy and her opinion has given primacy.

19. This Court is conscious of the fact that though the pregnancy is of 24 weeks and 05 days, but the risk associated with termination of pregnancy is not higher than risk of delivery at full term of pregnancy. The unwanted pregnancy would constitute grave injury to mental and physical health of the victim and the same is also confirmed by the opinion of the expert doctors in the report dated 07.11.2024.

20 In the case of *X vs. Principal Secretary, Health and Family Welfare Department* reported in (2023) 9 SCC 433, the Hon'ble Supreme Court after observing in para: 68 has held that 'mental health' has a wide meaning much more than absence of mental illness and has also held that a woman has right to decide freely all matters related to sexual and reproductive health.

21. In the case of *A Mother of X vs. The State of Maharashtra* (supra), the Hon'ble Supreme Court had allowed the termination of pregnancy which was of 29.6 weeks after referring to the medical report which apprised the Hon'ble Supreme Court on the impact of pregnancy on the physical, mental and emotional health of the victim. In the said case, the Hon'ble Supreme Court has also observed that medical doctors report dated 03.04.2024 did not deal with the impact of mental and physical health of victim and thereafter when the said report was placed before the Hon'ble Supreme Court, the Hon'ble Supreme Court on 22.04.2024 allowed the termination of pregnancy of the said victim.

21. In the case of *A Minor vs. State of Madhya Pradesh and others*, in Writ Petition No.31119 of 2024, the High Court of Madhya Pradesh at Jabalpur after considering the decision of the petitioner and her parents allowed the termination of pregnancy which was of 28 weeks and 6 days.

22. In the present case also by report dated 07.11.2024, which is in continuation of report dated 04/05.11.2024, the panel of expert

doctors have opined that medical termination of pregnancy can be done.

23. The case on hand falls within the purview of MTP Act and this Court finds that right of bodily integrity calls for permission to allow her termination of pregnancy. Moreover looking at the opinion of experts dated 04.011.2024 wherein it has been observed that physical fitness of the woman for termination of pregnancy is positive, moreover relying on the report dated 07.11.2024, which is in continuation of the report dated 04/05.11.2024 wherein it has been opined that medical termination of pregnancy can be done with due risk associated with the termination Weeks of pregnancy at 24 weeks and 5 days. Moreover the said report also clarified that continuing of pregnancy may be harmful physically as well as psychologically to the victim. The said report also opines that according to MTP Act considering her teenage and associated teenage pregnancy with adverse physical and psychological adverse consequences, medical termination of pregnancy can be done with due risk associated with termination of weeks of pregnancy of 24 weeks and 5 days. Further, the said report also opines that risk and complications associated with termination of pregnancy at 24 weeks 5 days, includes retained products of conception, bleeding, infection, uterine rupture etc. which may need surgical intervention (preterm caesarean section) and also can cause psychological complications. The mortality (death) risk is 0.6/100000.”

24. In view of above, issue **Rule** returnable forthwith. Learned Additional Public Prosecutor Mr.Ronak Raval waives service of

notice of rule on behalf of the respondent State.

25. Considering the facts of the case, this matter is taken up for final consideration today.

26. Learned advocates appearing for both the sides have submitted that when the expert panel of doctors have, in continuation of report dated 04.11.2024, by the report dated 07.11.2024 opined that termination of pregnancy can be done, in that case, the victim who is rape victim, should not be let carrying unwanted pregnancy.

27. On overall consideration, it appears that the victim and her guardian are desirous of termination of pregnancy, the victim girl is permitted to undergo medical termination of her pregnancy at GG Hospital, Jamnagar. Accordingly Superintendent of GG Hospital, Jamnagar is directed to arrange for medical termination of pregnancy of the victim by tomorrow. Considering the consent given by guardian and the victim herself, the present petition is allowed and accordingly this Court permits the termination of pregnancy of the victim 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 victim 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 victim.

(iv) In case if foetus is found to be alive, the doctors will give all medical assistance either in that hospital or in other hospital where such facility is available.

(v) The doctors shall take necessary tissue from the fetus of DNA identification by following scientific practice prescribed by the Standard Medical Practice for DNA Identification and shall hand over the same to the concerned Investigating Officer for onward transmission for forwarding such sample for analysis by the FSL.

(vi) All necessary care and caution shall be taken by the doctors while carrying out procedure for termination of pregnancy;

(vii) The State shall bear all the expenses in connection with the procedure and all medical expenses required in the interest safety and welfare of the victim.

(iix) The Superintendent, GG Hospital, Jamnagar shall discharge the victim after completion of the termination of pregnancy after examining the victim and finding suitable to do so. Till then, the victim shall be kept in the hospital.

27. This Court is of the opinion that based on the conclusion arrived at in case of *A (Mother of X) vs. State of Maharashtra and others* (supra), this Court deems it fit to issue following guidelines for the registered medical practitioner / medical board that while forming its opinion on termination of pregnancy.

(i) The registered medical practitioner / medical board must not restrict its opinion 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;

(ii) the registered medical practitioner / medical board, in their report, must give their opinion whether carrying of the pregnancy to the full term would impact upon the physical and mental well being of the victim / minor / pregnant woman whose termination of pregnancy is sought for;

(iii) The registered medical practitioner / medical board should also opine on whether termination of pregnancy can be carried out at this stage without any threat to the person whose termination of pregnancy is sought for.

It is needless to say that such guidelines are not in exhaustive manner and the registered medical practitioner / doctor/ board are at liberty to state any additional facts / opinion which it deems necessary in the facts of each case.

28. With the above observations and directions, the present

petition stands disposed of. Direct service **today** is permitted. Copy of this order also be provided to the learned APP for onward transmission to the concerned department for complying with directions and also the concerned hospital and the concerned Investigating Officer for taking necessary action.

MISHRA AMIT V.

(SANJEEV J.THAKER,J)