

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 40

WRIT C No. - 21956 OF 2024

X (MINOR VICTIM)

V.

STATE OF U.P. AND OTHERS

HON'BLE SHEKHAR B. SARAF, J.

HON'BLE MANJIVE SHUKLA, J.

1. Heard Sri Desh Ratan Chaudhary and Sri Siddharth Chaudhary, learned counsel appearing on behalf of the petitioner and Sri Birendra Prasad Shukla, the learned Standing Counsel appearing on behalf of the State.
2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a Writ of Mandamus commanding the Chief Medical Officer concerned (hereinafter referred to as respondent no. 3) to medically terminate the pregnancy of the petitioner.

FACTUAL MATRIX OF THE CASE

3. Factual matrix leading to the instant petition is delineated below:
 - a) Petitioner, aged 15 years, was living in the house of her maternal uncle.
 - b) On June 25, 2024, a First Information Report was lodged at Police Station concerned under Section 363 of the Indian Penal Code, 1860,

by the petitioner's maternal uncle alleging that the petitioner was enticed away by a man.

c) On June 28, 2024, during the course of the investigation, the petitioner was recovered, and it was found that the petitioner was subjected to sexual intercourse. Subsequently, the case was converted under Sections 363 and 376 of the IPC and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act).

d) It was revealed by the ultrasonography report that the petitioner was having a pregnancy of about 29 weeks at the time of recovery.

4. From an examination of the date of the F.I.R. and the allegation of rape in the month of June, we were uncertain as to whether the case made out by the petitioner of her rape in the month of June is valid as she was 29 weeks pregnant in the month of June itself. However, it is to be noted that if the petitioner is actually only 15 years old, the same would constitute an offence of statutory rape.

5. Accordingly, keeping in mind the urgency of the matter and taking a humanitarian view as the petitioner is supposedly 15 years old (as per her high school mark sheet), respondent No. 3 was directed to immediately constitute a Five-member Team headed by the Department of Obstetrics and Gynaecology, Department of Anaesthesia and Department of Radio Diagnosis to examine the petitioner and submit a report before this Court in a sealed cover within a period of 3 days. The team was also directed to carry out an age verification test on the petitioner and inform the Court of the same.

6. On July 18, 2024, the matter was placed before the coordinate Division Bench of this Court, who found the report dated July 16, 2024, provided by the Five-Member Team to be unclear with regard to the Medical Termination of Pregnancy and thereby directed respondent No. 3 to submit a fresh report before this Court on July 22, 2024, answering whether it is medically feasible and advisable to terminate the pregnancy suffered by the

petitioner. The relevant portion of the report dated July 16, 2024, is reproduced herein:

“मेडिकल बोर्ड की चिकित्सकीय आख्या :-

पीडिता के अल्ट्रासाउण्ड की रिपोर्ट अनुसार गर्भ लगभग 31 wks का है जोकि *period of viability* के सापेक्ष पूर्ण है। अल्ट्रासाउण्ड की रिपोर्ट अनुसार गर्भ का अनुमानित वजन 1662 ± 243 ग्राम है। *fetal Heart Rate* 130 BPM है। स्त्री रोग विशेषज्ञ के अनुसार पीडिता के गर्भ में पल रहे बच्चे का प्रसव कराया जा सकता है। आयु निर्धारण बोर्ड की राय अनुसार पीडिता की आयु लगभग 17 वर्ष अनुमानित है। बाल रोग विशेषज्ञ की राय-पीडिता की अल्ट्रासाउण्ड रिपोर्ट में पीडिता के गर्भ में पल रहा गर्भास्थ शिशु, लगभग 31 सप्ताह का है तथा पीडिता की स्वयं की आयु कम (17 वर्ष है)। यदि ऐसे पीडिता का प्रसव / एम०टी०पी० कराया जाता है जो जन्म लेने वाला शिशु काफी प्री मेचोर होगा तथा उसके फेफड़े सहित अन्य सभी अंग प्री मेचोर होंगे। जिस कारण शिशु सामान्य सांस लेने काफी कठिनाई होने की सम्भावना रहेगी।

अतः इस परिस्थिति में पीडिता का प्रसव / एम०टी०पी० उच्चकृत संस्थान में कराना अधिक सुरक्षित होगा।”

7. On July 22, 2024, the fresh report dated July 20, 2024, was submitted by respondent No. 3. The relevant portion of the report is produced herein:

“मेडिकल बोर्ड की चिकित्सकीय आख्या :-

पीडिता के अल्ट्रासाउण्ड की रिपोर्ट अनुसार गर्भस्थ भ्रूण लगभग 31 wks का है जोकि *period of viability* के सापेक्ष पूर्ण है। अल्ट्रासाउण्ड की रिपोर्ट अनुसार गर्भ भ्रूण का अनुमानित वजन 1662 ± 243 ग्राम है। *fetal Heart Rate* 130 BPM है।

आयु निर्धारण बोर्ड की राय अनुसार पीडिता की आयु लगभग 17 वर्ष अनुमानित है। पीडिता की अल्ट्रासाउण्ड रिपोर्ट में पीडिता के गर्भ में पल रहा गर्भस्थ शिशु, लगभग 31 सप्ताह का है तथा पीडिता की स्वयं की आयु (17 वर्ष) है। गर्भ में पल रहे किसी भी भ्रूण का गर्भपात, गर्भधारण के 24 सप्ताह के उपरान्त नियमानुसार नहीं किया जा सकता है (MTP AMENDMENT ACT 2021).

अतः उपरोक्त परिस्थिति के दृष्टिगत पीडिता का गर्भपात नहीं कराया जा सकता है।”

8. Upon perusal of the same, we found it to be inconclusive and passed a further order commanding the Chief Medical Officer, Prayagraj (hereinafter referred to as the C.M.O., Prayagraj) to constitute a Medical Board of five well-reputed doctors including the Doctors from the departments, namely,

Department of Obstetrics & Gynaecology, Department of Neonatology and Department of Psychiatry to examine the petitioner physically as well as mentally. The Medical Board was also directed to counsel the petitioner and her parents and advise them of the possibilities of adoption and the secrecy/privacy thereof that would be maintained in the event the petitioner agrees to carry the child to full term. Furthermore, they were directed to answer the following questions, which were formulated thus:

“a. Whether carrying the pregnancy to the full term would impact upon the physical and mental well-being of the petitioner?”

b. Whether termination of the pregnancy can be carried out at this stage without any threat to the life of the petitioner?”

c. Whether the age of the petitioner would impact on the health condition of the petitioner in case of medical termination of pregnancy?”

d. Whether the petitioner and her parents are consenting to the said procedure as explained by the Doctors with regard to the medical termination of the pregnancy?”

9. The conclusions in the report dated July 23, 2024, submitted by the Medical Board constituted by C.M.O., Prayagraj, are extracted below:

“रिट याचिका संख्या-21956/2024 स्टेट ऑफ यू०पी० व 02 अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 22.07.2024 में दिये गये निर्देशों के अनुपालन तथा प्रधानाचार्य, मोतीलाल नेहरू मेडिकल कालेज, प्रयागराज के पत्र संख्या-1664 दिनांक 23.07.2024 के क्रम में आज दिनांक 23.07.2024 को मेडिकल बोर्ड द्वारा याचिकर्ता का चिकित्सकीय परीक्षण किया गया तथा बिन्दु संख्या 7 में अंकित प्रश्नों के उत्तर निम्नवत दिये गये हैं:-

Question	Answer
a. Whether carrying the pregnancy to the full term would impact upon the physical and mental well being of the petitioner?	Yes, continuing the pregnancy to full term may impact on physical and mental well being of the petitioner.
b. Whether termination of the pregnancy can be carried out at this stage without any threat to the life	No, termination of pregnancy cannot be carried out at this stage without any threat to the life of the

of the petitioner?	petitioner because termination at this stage will require induction of labour that may be associated with complication and increased chances of surgical intervention.
c. Whether the age of the petitioner would impact on the health condition of the petitioner in case of medical termination of pregnancy?	Yes, the age of the petitioner would impact on the health condition of the petitioner in case of termination of pregnancy.
d. Whether the petitioner and her parents are consenting to the said procedure as explained by the doctors with regard to the medical termination of pregnancy?	Yes, the petitioner and her parents are consenting to the said procedure of termination of pregnancy after being explained and counseled regarding the procedure and possible outcomes.

10. Hence, the points put to the C.M.O., Prayagraj for determination were answered in the following terms:

- a. Yes, the pregnancy would have an impact on the physical and mental well-being of the petitioner.
- b. No, there cannot be a termination without any serious complications posed to the petitioner.
- c. Yes, the age is a relevant factor in impacting the health of the petitioner.
- d. Yes, the petitioner and her parents are consenting to the termination of pregnancy after getting counselled.

MEDICAL TERMINATION OF PREGNANCY

11. In the case of **X v. Union of India**, reported in **2023 SCC OnLine SC 1338**, the Three-Judge Bench comprising of Hon'ble Dr. D.Y. Chandrachud, C.J., Hon'ble J.B. Pardiwala, and Hon'ble Manoj Misra, JJ., the law relating to the Medical Termination of Pregnancies in India had been perspicuously laid out. The relevant paragraphs of the judgement are extracted as follows:

“15. The termination of pregnancies is governed by the MTP Act and the rules framed under it. The MTP Act is a progressive legislation which regulates the manner in which pregnancies may be terminated. Section 3 spells out certain conditions which must be satisfied before a pregnancy can be terminated. The conditions depend upon the length of the pregnancy. Where the length of the pregnancy does not exceed twenty weeks, one Registered Medical Practitioner must be of the opinion, formed in good faith, that :

a. 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. The anguish caused by a pregnancy which occurs due to the failure of a contraceptive method is presumed to constitute a grave injury to the mental health of the woman; or

b. There is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

16. Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy is presumed to constitute a grave injury to the mental health of the woman. The presumption adverted to in (a) above makes it evident that the MTP Act recognizes the autonomy of the pregnant woman and respects her right to choose the course of her life.

17. Where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks, two RMPs must be of the opinion discussed in the preceding paragraph. The categories of women where a pregnancy beyond 20 weeks and up to 24 weeks may be terminated are permitted to be prescribed by rules made by the delegate of the legislature. Rule 3B of the MTP Rules (as amended in 2021) provides grounds for the termination of a pregnancy up to twenty-four weeks. The termination may be allowed in the following cases or for the following persons:

a. Survivors of sexual assault or rape or incest;

b. Minors;

c. Change of marital status during the ongoing pregnancy (widowhood and divorce);

d. Women with physical disabilities with a major disability in terms of the criteria laid down under the Rights of Persons with Disabilities Act, 2016;

e. Mentally ill women including mental retardation;

f. Foetal malformation that has a substantial risk of being incompatible with life or where in the event of birth, the child may

suffer from physical or mental abnormalities and be seriously handicapped; and

g. Women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.

18. In *X v. Principal Secretary, Department of Health and Family Welfare, GNCTD*, this Court held that the benefits of Rule 3B(c) extend equally to both single and married women and that the benefits of Rule 3B extend to all women who undergo a change in their material circumstances.

19. Significantly, if in the opinion of an RMP, the termination of a pregnancy is immediately necessary to save the life of a pregnant woman, the provisions of Section 3 which relate to the length of the pregnancy and the opinion of two RMPs shall not apply. Section 4 (which concerns the place at which a pregnancy may be terminated) shall not apply to such cases as well. The design of the statute makes it evident that saving the life of the pregnant woman is of paramount importance, notwithstanding the length of the pregnancy.

20. Further, the provisions of Section 3(2) relating to the length of the pregnancy shall not apply to the termination of a pregnancy by an RMP, where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board. The Medical Board has the power to allow or deny the termination of a pregnancy the length of which is beyond twenty-four weeks. It may do so only after ensuring that the procedure would be safe for the woman at that gestation age and after considering whether the foetal malformation leads to a substantial risk of the foetus being incompatible with life, or where the child (if it is born) may suffer from such physical or mental abnormalities as to be seriously handicapped. Therefore, the outer temporal limit within which a pregnancy may be terminated is lifted in some cases.

21. The position of law can therefore be summarized as follows:

<i>Length of the pregnancy</i>	<i>Requirements for termination</i>
<i>Up to twenty weeks</i>	<i>Opinion of one RMP in terms of Section 3(2)</i>
<i>Between twenty and twenty-four weeks</i>	<i>Opinion of two RMPs in terms of Section 3(2) read with Rule 3B.</i>
<i>Beyond twenty-four weeks</i>	<i>If the termination is</i>

	<i>required to save the life of the pregnant woman, the opinion of one RMP in terms of Section 5</i>
	<i>If there are substantial foetal abnormalities, with the approval of the Medical Board in terms of Section 3(2B) read with Rule 3A(a) (i)”</i>

ANALYSIS

12. We have heard the learned counsel appearing for the parties and perused the materials on record.

13. First and foremost, the issue that lies in front of us is whether or not to allow the termination of this pregnancy that has now culminated into its 32nd week.

14. In **R -v- Union of India & Ors.**, bearing **SLP (Civil) Diary No(s). 4527/2024**, headed by Hon’ble Bela M. Trivedi and Hon’ble Prasanna Bhalachandra Varale, JJ., the case arose out of the Delhi High Court judgement of **R -v- Union of India & Ors**, reported in **2024 SCC OnLine Del 440**, headed by Hon’ble Subramonium Prasad, J. The issue of whether or not to allow the termination of a 32-week pregnancy was placed before the Hon’ble Supreme Court. The case dealt primarily with the aspects of grave injury to the physical and mental health of the petitioner, which would have resulted out of carrying the pregnancy to term, given the material changes and circumstances in her marital life that arose out of the death of her husband. The Delhi High Court in its judgement considered the effects of preterm delivery on the mother keeping in mind the report of the Medical Board constituted by AIIMS, New Delhi, wherein they stated that given that this was her first pregnancy, the preterm induction of labor has a high

chance of failure and may have serious implications on her future pregnancies. The relevant paragraph from the judgement is as follows:

“9. Ms. Aishwarya Bhati, learned ASG appearing for Union of India, has drawn the attention of this Court to the report dated 13.01.2024 which states that as care providers, AIIMS is committed to provide best possible care to the mother and fetus, the mother's interest being paramount. The report also states that the outcome of severe depression with suicidal ideation cannot be predicted at present pre and post delivery. The report also states that the effects of the preterm delivery on the mother should also be considered and this being her first pregnancy, a preterm induction of labor has a high chance of failure and may lead to caesarean section which may have serious implications on her future pregnancies. The report also states that the outcome will be much better, if the baby is delivered at 34 weeks or beyond. The report also states that the provision of termination of pregnancies beyond 24 weeks is to be done for fetuses having significant abnormalities and feticide in this case is neither justified nor ethical as the fetus is grossly normal.”

15. Bearing this in mind, the Hon'ble Supreme Court upheld the decision of the Delhi High Court dated January 23, 2024. Relevant paragraphs from the Supreme Court judgement are extracted as follows:

“3. Having heard learned counsel for the petitioner and having perused the impugned order passed by the High Court, it appears that the High Court had called for the report from the Medical Board, AIIMS which is reproduced as under:- “In this regard, it is informed that at present the period of gestation is 30 weeks plus 6 days, the fetus is viable and 2 the fetus will be alive after delivery. The anticipated requirement for NICU ICU care will range from 30-45 days with reasonable risk of physical mental handicap subsequently. However, if pregnancy is carried on till term (37 week), the anticipated requirement of NICU will be minimal to nil. There will be very high likelihood of morbidity free survival. Hence the medical board would like to request the Hon'ble High Court of Delhi for appropriate management of new born after delivery.”

4. Considering the said Report, the High Court has observed as follows:-

“23. The Medical Reports indicate that a preterm induction of labor has a high chance of failure and may lead to caesarean section which may have serious implications on her future pregnancies. The report also indicates that the child which is born after a preterm induction of labor can have physical and

mental deficiencies which will have drastic effect on the future of the child and that the NICU ICU care in such case is about 30-45 days with reasonable risk of physical and mental handicap of the new born.

24. In view of the Reports dated 06.01.2024, 12.01.2024 and 13.01.2024 of the AIIMS Hospital, which have been brought to the notice of this Court subsequent to the Order dated 04.01.2024, the Court is inclined to recall the Judgment dated 04.01.2024 passed by this Court. The Judgment dated 04.01.2024 is hereby recalled.

25. The Petitioner, who is already having as on date 32 weeks period of gestation, if so advised, can go to AIIMS Hospital, New Delhi and present herself before the Medical Board and it is for the Medical Board to take a decision as to how to go ahead with the delivery at the appropriate time.

26. It is for the Petitioner to decide where the delivery is to be conducted i.e., whether to go AIIMS or any other Central Government Hospital or at any State Government Hospital. If the Petitioner is inclined to undergo her delivery at any Central Government Hospital, the Central Government shall bear all the medical expenses and all other incidental charges of the delivery. If the Petitioner is inclined to undergo her delivery at any State Government Hospital, the State Government shall bear all the medical expenses and all other incidental charges of the delivery

27. If the Petitioner is inclined to give the new born child in adoption then as suggested by Ms. Aishwarya Bhati, learned ASG, the Union of India shall ensure that the process of adoption takes place at the earliest and in a smooth fashion.”

5. In view of the above well-considered Judgment passed by the High Court, and considering the fact that the petitioner is having pregnancy of over 32 weeks by now, it is not advisable to accept her prayer as prayed for.

6. Since the High Court has taken sufficient safeguards in the impugned order, it is expected that the petitioner shall be taken care of by the Central Government Hospital/State Government Hospital as observed in the said order.”

16. Here, the Supreme Court upheld the judgement of the Delhi High Court, keeping in mind the late stage of pregnancy of the woman. It balanced the best interests of the mother and foetus and directed that upon

delivery, the child shall be given up for adoption. This was done in consideration of the complications that might have arisen out of going ahead with the medical termination of such a late-stage pregnancy. This case subtly ensured that the health of the mother was not compromised whilst also making an attempt to further the rights of the foetus, thereby stepping a step further in the current landscape of abortion laws in India.

17. In the case of **X -v- Union of India and Another (supra)**, the Hon'ble Supreme Court dealt with the question of whether or not to terminate a pregnancy in its third trimester, for the foetus was a viable one. The petitioner, in that case, did not have the financial means to raise the child, which initially led her to seek the termination, but as the case evolved, she grew averse to terminating the baby and sought alternative means. Relevant paragraphs from the judgement have been extracted as follows:

“29. As noticed above, the length of the pregnancy has crossed twenty-four weeks. It is now approximately twenty-six weeks and five days. A medical termination of the pregnancy cannot be permitted for the following reasons:

a. Having crossed the statutory limit of twenty-four weeks, the requirements in either of Section 3(2B) or Section 5 must be met;

b. There are no “substantial foetal abnormalities” diagnosed by a Medical Board in this case, in terms of Section 3(2B). This Court called for a second medical report from AIIMS to ensure that the facts of the case were accurately placed before it and no foetal abnormality was detected; and

c. Neither of the two reports submitted by the Medical Boards indicates that a termination is immediately necessary to save the life of the petitioner, in terms of Section 5.

30. Under Article 142 of the Constitution, this Court has the power to do complete justice. However, this power may not be attracted in every case. If a medical termination were to be conducted at this stage, the doctors would be faced with a viable foetus. One of the options before this Court, which the email from AIIMS has flagged, is for it to direct the doctors to stop the heartbeat. This Court is averse to issuing a direction of this nature for the reasons recorded in the preceding paragraph. The petitioner, too, did not wish for this Court to issue such a direction. This was communicated by her to the court during the course of the hearing. In the absence of a

direction to stop the heartbeat, the viable foetus would be faced with a significant risk of lifelong physical and mental disabilities. The reports submitted by the Medical Board speak for themselves.

31. For these reasons, we do not accede to the prayer for the medical termination of the pregnancy.

32. The delivery will be conducted by AIIMS at the appropriate time. The Union Government has undertaken to pay all the medical costs for the delivery and incidental to it.

33. Should the petitioner be inclined to give the child up for adoption, the Union Government has stated through the submission of the ASG that they shall ensure that this process takes place at the earliest, and in a smooth fashion. Needless to say, the decision of whether to give the child up for adoption is entirely that of the parents.”

18. In the aforementioned case, the question that was put in front of the Hon’ble Supreme Court was pertaining to the AIIMS, New Delhi report dated October 10, 2023, wherein they stated that the foetus had strong chances of survival and thereby sought directions as to whether the foetal heartbeat ought to be stopped, considering that if the same was not done, then the baby would be placed in an Intensive Care Unit and there was a high possibility of immediate and long-term physical and mental disability. The Court, after carefully analysing the law pertaining to Medical Termination of Pregnancy in India and the report provided by AIIMS, New Delhi, directed AIIMS to ensure that the delivery takes place smoothly whenever the time comes and for the State to ensure that the adoption of the child is also carried out seamlessly. This was done keeping in mind that the foetus would be able to survive on its own and that there was no express direction to stop the heartbeat. This judgement, too, in essence, put forward the idea of opting for adoption over terminating a third-trimester pregnancy.

THE PROCESS OF ADOPTION IN INDIA

19. Adoption in India is regulated by three primary laws: the Hindu Adoption and Maintenance Act of 1956, which applies to Hindus, Buddhists, Jains, and Sikhs; the Guardian and Wards Act of 1890, which governs adoption for Muslims, Parsis, Christians, and Jews; and the Juvenile Justice (Care and Protection) Act of 2000, which provides a more general framework. Prospective Adoptive Parents (PAPs) must submit their adoption application and necessary documents via CARA's website. Following this, a social worker from a CARA-recognized Specialised Adoption Agency (SAA) conducts a home study of the PAPs and uploads the report online. The SAA then shares profiles of children who are legally available for adoption with the PAPs, who are required to reserve a child within 48 hours.

20. In **P -v- Union of India**, bearing **WP(s) Civil No(s). 65/2023**, headed by Hon'ble D.Y. Chandrachud, C.J., Hon'ble Pamidighantam Sri Narasimha, and Hon'ble J.B. Pardiwala, JJ. dealt with the case of a petitioner who expressed her desire to proceed with the delivery at an early date and did not wish to retain the child after delivery. Additionally, two prospective parents registered with a registration number under the Central Adoption Resource Authority (CARA) came forward to adopt the child. The issue that was put before the Hon'ble Supreme Court therein was whether the petitioner's request to proceed with the delivery of the child and allow for the adoption of the child by the prospective parents identified. The Court, considering the petitioner's desire to proceed with the delivery and the expressed intention not to retain the child, granted the request to proceed with the delivery and allowed for the adoption of the child by the prospective parents registered with CARA. This was done keeping in mind the 'best interest of the child' principle as the identified adoptive parents provided a suitable environment for the child's upbringing. The relevant paragraphs from the judgement are attached hereinafter:

“4. In the circumstances, having regard to the late stage of the pregnancy, it has been considered in the best interest of the mother and the fetus that the child, upon delivery, may be given in adoption.

The request for adoption has been suggested by the petitioner since she would not be in a position to care for the child.

5. *The petitioner is about twenty years old. She is reported to have lost her father during the Covid-19 pandemic. She has a mother, who is unwell. The petitioner also has a married sister who is about ten years older than her. Ms Aishwarya Bhati has informed the Court that she has also interacted with the sister of the petitioner to explore whether she would be willing to take the child in adoption. However, the sister expressed her inability to do so for a variety of reasons.*

6. *In this backdrop, Mr Tushar Mehta, Solicitor General and Ms Aishwarya Bhati have apprised the Court that an effort has been made to facilitate the process of adoption of the child after delivery, by prospective parents who are registered with the Child Adoption Resource Authority under the auspices of the Union Ministry of Women and Child Development. The Court is apprised of the fact that two prospective parents who have been registered with a parent registration number under CARA are ready and willing to adopt the child. In the interest of the privacy of the adopted parents, the parent registration number has not been referred to in the present order.*

7. *We accordingly issue the following directions:*

(i) In terms of the request which is made before the Court, the delivery of the child by the petitioner shall take place at AIIMS. We request the Director, AIIMS to ensure that all necessary facilities are made available without the payment of fees, charges or expenses of any nature so that the delivery can take place in a safe environment at AIIMS. The privacy of the petitioner shall be maintained and all steps shall be taken to ensure that the identity of the petitioner is not divulged in the course of the hospitalization at AIIMS; and

(ii) Permission is granted for the adoption of the child by the prospective parents whose details have been set out in the CARA registration form. CARA shall take all necessary steps to facilitate the implementation of this order.”

21. The cases of **R -v- Union of India & Ors (supra)** and **X -v- Union of India and Another (supra)**, further placed emphasis on putting up the newborn child in adoption alongside ensuring that the State shall streamline the process of adoption in cases of petitions seeking Medical Termination of Pregnancies in later stages of pregnancy.

22. Keeping the above precedents in mind, the Court decided to counsel the girl and her relatives in the presence of the counsel appearing on behalf of the petitioner as well as the counsel on the behalf of the State. The court explained to the petitioner the risks involved in the termination due to the late stage of pregnancy. The petitioner and the relatives upon being made to understand the risks to the life of the petitioner and future risks with regard to losing the ability to be pregnant, subsequently opted to deliver the child instead of terminating the said pregnancy. The girl and her mother were both of the opinion that they would like to put the child for adoption post-parturition.

23. In the case of **A (Mother of X) -v- State of Maharashtra**, reported in **2024 SCC OnLine SC 835**, headed by Hon'ble Dr. D.Y. Chandrachud, C.J., Hon'ble J.B. Pardiwala, and Hon'ble Manoj Misra, JJ., the Hon'ble Supreme Court dealt with the issue of a minor child who was also subjected to sexual assault and was 25 weeks into her pregnancy. While the Court had allowed for the Medical Termination of Pregnancy of the foetus in its earlier order dated April 22, 2024, it recalled the same in its final judgement on the ground that the petitioner was unwilling to go ahead with the termination of pregnancy because of the risks that the same would pose to her life. Here, the Court directed the delivery of the child to take place at the appropriate time and directed the State to bear all expenses concerning the same. Additionally, the State was also directed to ensure that if the victim wished for the child to be put up for adoption, then the same would also be taken care of by the State. The relevant paragraphs of the aforementioned judgements are extracted as follows:

“36. 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.

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

37.1. Sion Hospital shall bear all the expenses in regard to the hospitalisation 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

37.2. 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.

24. The Supreme Court, in this judgement, ensured that the rights of the victim were placed on the highest pedestal, keeping in mind the pregnant girl's Right to Bodily Autonomy enshrined under Article 21 of the Constitution of India. and gave appropriate directions with regard to the adoption process that was to follow thereafter. This placed more emphasis on the State's liability for bearing the expenses of the victims in such cases. Furthermore, it was highlighted that the Medical Board must not restrict itself within the criteria of Section 3(2-B) of the Medical Termination of Pregnancy Act, 1971, but also take into account the physical and mental well-being of the pregnant woman.

25. In several judgements that have been cited above, the Courts have held that the choice of terminating one's pregnancy is a serious and delicate issue that needs to be dealt with a caring touch and in a humane manner. This Court is also of the opinion that a woman's decision in whether or not to go ahead with the termination of her pregnancy is a decision that is to be taken by no one but herself. This is primarily based on the widely acknowledged idea of bodily autonomy. Here, her consent reigns supreme. Even if she decides to go ahead with the pregnancy and put the child up for adoption, the duty lies on the State to ensure that it is carried out as privately as possible and also to ensure that the child, being a citizen of this land, is not stripped of the fundamental rights that are enshrined in the Constitution. Thereby, it is the State's duty to ensure that the adoption process, too, is carried out in an efficient manner and that the 'best interests of the child' principle are followed.

DIRECTIONS

26. Keeping in mind the decision of the petitioner and her mother, we direct that the delivery of the child shall take place at Lala Lajpat Rai Memorial Medical College, Meerut. The State shall bear all the expenses with regard to the delivery of the child so that no hindrances exist in the course of the same. The District Magistrate, Meerut, is directed to be involved in the process so as to ensure that all the medical and ancillary expenses of the petitioner and her family are borne by the State, which shall be inclusive of their travel and stay in Meerut whensoever required. The parents of the petitioner may approach the Principal and Medical Superintendent of the Lala Lajpat Rai Memorial Medical College, Meerut and the District Magistrate, Meerut, for further course of action and proper guidance in this regard. The Principal and Medical Superintendent of the Lala Lajpat Rai Memorial Medical College, Meerut and the District Magistrate, Meerut, are directed to contact Sri Desh Ratan Chaudhary, Advocate at his Mobile No.***** to ensure the future course of action.

27. Considering the fact that the petitioner and her mother have decided to give up the child for adoption, the Director of the Central Adoption Resource Authority (CARA) shall take appropriate steps in tandem with the applicable provisions of law to facilitate the process and ensure that the adoption process is expedited.

28. Keeping in mind the delicate nature of the issue involved, all the authorities concerned are directed to ensure complete secrecy in the matter so that the privacy of the petitioner and her family are maintained and the identity of the petitioner is not revealed in any manner whatsoever.

29. Counsel appearing on behalf of both the parties shall keep the Court informed of any developments that may take place and shall be at liberty to seek any further instructions as may be required for the smooth and efficient carrying out of the adoption process.

30. List this matter on August 28, 2024.

31. Since we have given directions to certain officers, we are suo motu impleading them in this writ petition.

32. Accordingly, the Principal & Medical Superintendent of the Lala Lajpat Rai Memorial Medical College, Meerut, the District Magistrate, Meerut and Director of the Central Adoption Resource Authority are impleaded in this writ petition.

33. The Registrar (Compliance) is directed to communicate this order directly to the Principal and Medical Superintendent of the Lala Lajpat Rai Memorial Medical College, Meerut, the District Magistrate, Meerut, and the Director of CARA forthwith. Registrar (Compliance) is further directed to also send copy of this writ petition to them.

Date :- 24.07.2024
Kuldeep

(Manjive Shukla, J.)

(Shekhar B. Saraf, J.)